

Morgan, Richard 01-27-11.txt

23 MR. BUNCHER: RMR shows up here. I think  
24 my notes are wrong.

25 Q. (BY MR. WEITMAN) The Teleport building,

0135

1 that's 20 of 26.

2 A. Yes, sir.

3 Q. Is it correct that there are unpaid taxes of  
4 25,368.35?

5 A. I have got to go back to another schedule.  
6 Yes.

7 Q. And, you know, given the fact that it's a  
8 negative cash flow, there's no source of payment there  
9 either, correct?

10 A. No, not necessarily. This is a  
11 cross-collateral with the Fenton Square under the  
12 NexBank collateral.

13 Q. And this is American Bank of Commerce that's  
14 got the first lien on Teleport?

15 A. Oh, you are right. You are right. Let's see.

16 MR. BUNCHER: Thermalloy is the --

17 A. Teleport is on ABC, you are correct.

18 Q. (BY MR. WEITMAN) So that's indebtedness of  
19 about 4.4 million, right?

20 A. You mean the indebtedness with ABC Commerce?

21 Q. American Bank of Commerce.

22 A. Let's get the schedule on -- but the answer to  
23 the question is that it is cross-collateralized with  
24 Bridgewood Ranch Apartments, so there is money to pay.  
25 I'm showing the American Bank of Commerce, 4,999,000.

0136

1 Q. Right. And they have got a first lien on  
2 Teleport, and they have got a first lien on  
3 Bridgeport --

4 MR. BUNCHER: Bridgewood.

5 Q. (BY MR. WEITMAN) -- Ranch Apartments, correct?  
6 I'm sorry. Bridgewood.

7 A. And some additional land.

8 Q. Okay. And, again, unpaid taxes of thousands  
9 of dollars as to each, correct?

10 A. Thousands of dollars --

11 Q. Well, 124,083 as to Bridgewood, correct?

12 MR. BUNCHER: Now we are back on this  
13 one.

14 A. Yeah, the one thing that I do not know at this  
15 point in time -- and I have got -- looking into it to  
16 see what escrows there are, if any, already placed with  
17 the lenders for the purpose of these taxes. And I don't  
18 know that yet.

19 Q. (BY MR. WEITMAN) You have been involved in  
20 other bankruptcies. If the loan is in default, is it  
21 typical that lenders will offset those funds that are  
22 held in escrow?

23 A. I can't speak to the typical of that.

24 Q. Okay. Can you take the Notice of Deposition,  
25 which is 166, and then turn to page 11?

0137

1 A. (Complies.)

2 Q. Would you take a look, along with your  
3 counsel, if possible, on item 1, paragraph 1(ix). Do  
4 you have knowledge as to whether these transfers were  
5 with the authority or not with the authority under the  
6 relevant loan documents with respect to each of these  
7 transfers? I think you earlier said you didn't have

Morgan, Richard 01-27-11.txt

8 knowledge of that, correct?  
9 THE WITNESS: Didn't we stipulate to  
10 that?  
11 MR. BUNCHER: I think we discussed the  
12 fact we will see if we can't stipulate to that. So we  
13 don't need to have anybody really testify about that.  
14 But I will get back to you on that.  
15 MR. WEITMAN: Okay. And the same thing  
16 for item (x) as well.  
17 MR. BUNCHER: Well, I think that's a  
18 matter of record in the --  
19 MR. WEITMAN: Right. But I need someone  
20 who can testify to that.  
21 MR. BUNCHER: You don't need anybody that  
22 can testify to it because I think three parties have  
23 filed motions to lift stay on the basis of claiming they  
24 have foreclosed.  
25 MR. WEITMAN: Right.  
0138  
1 MR. BUNCHER: And those parties --  
2 MR. WEITMAN: But I'm entitled --  
3 MR. BUNCHER: It is a matter of record in  
4 the bankruptcy case.  
5 MR. WEITMAN: But I'm entitled --  
6 MR. BUNCHER: And it is in dispute too,  
7 by the way.  
8 MR. WEITMAN: As to whether there's  
9 authority to annul the automatic stay, yes. I just need  
10 someone -- and you did designate this gentleman as  
11 having knowledge -- to tell me whether the properties'  
12 transfer was subject to a pending foreclosure  
13 proceeding.  
14 MR. BUNCHER: Right. I think --  
15 MR. WEITMAN: And all I would ask is if  
16 you would stipulate to it so I don't have to call  
17 another witness. That's all I ask.  
18 MR. BUNCHER: I think we can stipulate as  
19 to which properties were in foreclosure because, as I  
20 said, it is a matter of record in the bankruptcy  
21 already.  
22 MR. WEITMAN: Fine. Yeah, I'm going to  
23 need to have someone either testify to or stipulate as  
24 to when FRE knew of these pending foreclosures.  
25 MR. BUNCHER: When FRE knew? Well, I  
0139  
1 think some of those documents -- the notices of  
2 foreclosure may actually be attached, for example, to  
3 Mr. Stromberg's motion. But, anyway, I understand your  
4 position.  
5 MR. WEITMAN: Well, I'm just saying right  
6 now --  
7 MR. BUNCHER: I'm not answering your  
8 question right now.  
9 MR. WEITMAN: That's fine.  
10 MR. BUNCHER: You said on the record you  
11 either have to have a stipulation or you need a witness.  
12 You have made your record. We will deal with it.  
13 MR. WEITMAN: Great. And then as to item  
14 2, we asked for, and you designated, Mr. Morgan; that he  
15 was knowledgeable about the debtor's participation in or  
16 receipt of the transfers received from the debtor's  
17 affiliates in the six-month period immediately preceding  
18 the petition date. Yet, I believe, Mr. Morgan has

Morgan, Richard 01-27-11.txt  
19 testified that all he knew is that as of December 23 the  
20 transactions had occurred already.

21 So I need -- I need you to provide a  
22 witness who can tell me when this whole thing came  
23 about, that these transfers would occur, someone other  
24 than Mr. Morgan since he doesn't -- it was a fait  
25 accompli by the time Mr. Morgan came on board.

0140

1 MR. BUNCHER: I guess we will take that  
2 up. I mean, I'm not aware of any other transfers that  
3 occurred prior to December 23. Those are the transfers  
4 at issue in the bankruptcy and in your motion to  
5 dismiss. So my position would be, I have produced a  
6 witness that has knowledge of the transfers that have  
7 occurred.

8 MR. WEITMAN: Okay.

9 Q. (BY MR. WEITMAN) There is a statement, Mr.  
10 Morgan, in one of the pleadings which suggests that FRE  
11 received or owned, effective as of December 23, stock,  
12 notes, leases, and other assets. And all we have been  
13 talking about are, really, the real estate transfers.  
14 Is there something you have that summarizes those other  
15 transfers?

16 A. Well, those leases go to the buildings.

17 Q. So those are the Addison hangar leases?

18 A. No, no. The leases that went with the real  
19 estate --

20 Q. Oh, that's what you are talking about. I'm  
21 sorry.

22 A. Yeah. Yeah. There were two master leases,  
23 Addison Hangar 1 and Addison Hangar 2. And stock is an  
24 additional collateral to one of the ABC loans, which is  
25 securing some additional collateral -- it is 200 and

0141

1 something thousand shares of TCI stock that was already  
2 as collateral to the ABC under some additional  
3 collateral.

4 Q. Explain that a little more. Is there a  
5 document that evidences that?

6 A. ABC has the document. They had the  
7 collateral.

8 MR. BUNCHER: There's information on the  
9 Debtor Interview, Exhibit 167, about some loans secured  
10 by stock of TCI. It is on item f on page 3. There's  
11 information on item g on the same page about the Addison  
12 Hangar 1 and 2 leases, and some notes payable on an  
13 attached Exhibit 5.

14 MR. WEITMAN: So on Exhibit 4 -- could  
15 you hand that to Mr. Morgan?

16 MR. BUNCHER: Exhibit 4?

17 MR. WEITMAN: Yeah, Exhibit 4 on --

18 MR. BUNCHER: Right.

19 A. Yes.

20 Q. (BY MR. WEITMAN) So tell me, again, this TCI  
21 stock that you received, what was involved?

22 A. I didn't receive it.

23 Q. I'm sorry. FRE had transferred into it?

24 A. No, no.

25 Q. Let's start again.

0142

1 A. What I mentioned, part of the -- part of the  
2 taking of the ABC loan also took with it the fact that  
3 there was --

Morgan, Richard 01-27-11.txt

4 Q. By the way, when you say ABC loan --  
5 A. ABC Commerce.  
6 Q. American Bank of Commerce?  
7 A. American Bank of Commerce.  
8 Q. I was lost.  
9 A. ABC's loan is securitized by these two -- the  
10 TCI stock and this note receivables from Woodmont TCI  
11 Group, LP. That was additional collateral to the asset  
12 to the extent we own it. But we don't own it, we don't  
13 control it because that's extra collateral to the ABC  
14 Bank.  
15 Q. Have there been any discussions since you have  
16 got -- do you remember we talked about this basically,  
17 like, three public companies that are obligated on the  
18 various debt? Will they provide any kind of financial  
19 support to FRE in the chapter proceedings?  
20 A. In what form?  
21 Q. In any form. I mean, they are co-obligors,  
22 are they not, or original obligors on various debt  
23 instruments in favor of the secured lenders?  
24 A. Yes.  
25 Q. Are they going to provide any financial  
0143 support? Have they offered anything?  
1 A. I have not asked for anything yet.  
2 Q. But if you were to need something, you could  
3 probably just go to one of the floors in the building  
4 where those folks are?  
5 A. I don't know. I don't know how simple it is.  
6 You know, I am -- I'm faced with, you know, the fact  
7 that if every property has -- if every lender's  
8 collateral stays -- the money stays within that pool,  
9 then I am faced with the land, your loan, that have no  
10 income.  
11 So if there's going to be an adequate  
12 protection order, then it has to come from somewhere.  
13 Either I have to do an investor package to put it  
14 together to provide that, or TCI or someone is going to  
15 have to come to the table and help fund that. And  
16 that's not resolved yet.  
17 Q. Mr. Buncher said that you gave insurance  
18 certificates to the U.S. Trustee's Office during the  
19 debtor interview to show that all of the property has  
20 all the required insurance?  
21 A. That's correct.  
22 Q. What is the premium for all of this property  
23 that's insured?  
24 A. Everything is shown on the individual  
0144 schedule.  
1 Q. I'm sorry. There's a schedule that details  
2 the insurance premiums for all of the thirty properties?  
3 A. No, on all the cash collateral.  
4 Q. The insurance premiums, I think, relate to the  
5 operating entities --  
6 A. It does, yes.  
7 Q. -- the operating properties. What about the  
8 nonoperating properties, where is that insurance --  
9 A. The liability insurance?  
10 Q. Yeah, if someone gets hurt falling on a  
11 property.  
12 A. I will have to get that. I'm not sure if we  
13 have provided a policy for that. I will have to get  
14

Morgan, Richard 01-27-11.txt

15 that.

16 Q. But do you think it is insured?

17 A. Yes.

18 Q. And does it show the new owner of the property  
19 as being FRE? Have you transferred all of that over as  
20 the new owner?

21 A. It should. It should.

22 Q. And does it show who the loss payees are in  
23 the event of some damage, i.e., maybe it is Petra  
24 Mortgage or NexBank or any of these others?

25 A. Well, you are asking me to testify what a

0145

1 policy says that I don't know exists. So I will tell  
2 you, all the things you are asking should be included in  
3 the policy.

4 Q. Okay. If you would be able to look into that  
5 for me --

6 A. We will certainly do that.

7 Q. -- because I would like to know everything is  
8 insured; that the, you know, premiums have been paid.  
9 And I would like to know, you know, what the -- you  
10 know, that there's a source of payment for the premiums  
11 in the future if someone were to get hurt on my  
12 property. Okay?

13 A. Okay.

14 INFORMATION REQUESTED:

15 MR. WEITMAN: Mr. Buncher, I would like  
16 to, if it is agreeable to you, pass the witness with the  
17 right to recall him with additional questions just so we  
18 can move things along.

19 MR. BUNCHER: Sure. I'm not waiving my 7  
20 hour --

21 MR. WEITMAN: No, I understand that.

22 MR. BUNCHER: -- statement. But that's  
23 fine. I mean, if you want to let others ask questions  
24 and if there's time left on my 7 hours, to come back and  
25 you want to ask a few more, I don't have an issue with

0146

1 that.

2 MR. WEITMAN: Sure. Very good. And,  
3 again, it is premised upon, if you will, the cooperation  
4 I'm sure you will provide in connection with a lot of  
5 the stipulated facts that we are hoping to get and other  
6 things that are here. Just so we can present to the  
7 Court, in the most expedited way possible, the documents  
8 and the story of the transfers.

9 MR. BUNCHER: I have told you I will work  
10 with you on the stipulations. I'm not certain we need  
11 the length of stipulations you guys have drafted. But  
12 you have obviously put a lot of work into that. And I  
13 have already got somebody looking that over at the  
14 office, so we will work on that.

15 MR. WEITMAN: Great. Thank you.

16 MR. BUNCHER: Can we take 10 seconds?  
17 (Recess, 1:32 p.m. to 1:40 p.m.)

18 EXAMINATION

19 BY MR. KIM:

20 Q. Good afternoon, Mr. Morgan. My name is James  
21 Kim. I'm with the law firm of Cole, Schotz, Meisel,  
22 Forman & Leonard. And we represent Highland Capital  
23 Management, LP. Okay?

24 A. Okay.

25 Q. Good afternoon. Earlier today when Mr.

Morgan, Richard 01-27-11.txt

0147

1 weitman was asking you questions regarding the Fenton  
2 building, you mentioned something about your goal being  
3 to increase the tenants of that building, correct?

4 A. Yes.

5 Q. And what, if anything, have you done to date  
6 to increase the tenants at that building?

7 A. Actually, there are two deals right now. I  
8 have to get them to the point where I have total  
9 commitment. But we have 100,000 square foot tenant,  
10 HAC, which is Hospital -- HCA, Hospital Corporation of  
11 America. They are already on MacArthur Boulevard in  
12 that same general area. We were competing with a  
13 building at Belt Line and 635. And they have come back  
14 with a request -- a second request for proposal, a  
15 counter to the proposal, which we are working on right  
16 now. That will define the scope of the tenant finish  
17 and so forth that has to be put into it. But it's  
18 effectively a contribution of about \$21 a square foot.  
19 So that puts about 2 million 1 to the bottom line.

20 There's another tenant called Devon  
21 Securities, which we are very close to getting. That is  
22 an occupancy in and around September, October, 25,000  
23 square feet.

24 Again -- and when I use numbers, I'm  
25 using gross. It is really 19 plus and the common area

0148

1 makes it maybe a little bit more than 21. So let's just  
2 use the 19 base rent because that's what goes to the  
3 bottom line. It is 25,000 square feet. Again, the  
4 tenant finish is being negotiated.

5 But those are two right now that are on  
6 the -- so it is 125,000 square feet.

7 Q. Let me just make sure I understand it. HCA is  
8 a current tenant at the building?

9 A. No. HCA is a new prospective tenant. They  
10 love the fact -- and I forget which one or two -- but  
11 they love the fact that there are two floors, two 50,000  
12 square foot floor plates, where they can put all of  
13 their employees on two things.

14 You know, the competition factor is that,  
15 first of all, you have got the food service. You have  
16 got the atrium. You have got covered parking. None of  
17 which is enjoyed at the other building. And we have --  
18 basically, we are leasing at about -- we think at about  
19 a \$1 a square foot less than the other place because it  
20 is a brand-new building up there.

21 So I'm very hopeful about getting those  
22 two tenants.

23 Q. And who has been negotiating with HCA?

24 A. It is a broker. Grubb & Ellis is the actual  
25 broker.

0149

1 Q. And who at Grubb & Ellis?

2 A. I don't know.

3 Q. Have you been involved in the negotiations?

4 A. No. Actually, see, Regis is doing the --  
5 Regis is doing -- they already generated this tenant  
6 before I got there. Scott Porter is the coordinator.  
7 And Scott is preparing a counter -- an RFP right now  
8 that I can actually review and go back to on.

9 And Devon, we are working on the final  
10 proposal, so it is something I can review.

Morgan, Richard 01-27-11.txt

11 Q. Have you seen these written proposals?

12 A. Pardon?

13 Q. Have you seen any written proposals?

14 A. I have not seen it. But there's an RFP --

15 what do you call them -- second request for proposal

16 down on Mr. Porter's desk right now. And he's working

17 on it. He's going to bring me what they offered and

18 what he's countering back. I will have that by Monday.

19 Q. Let me ask you what you know and what you have

20 seen. With respect to HCA, you have not seen any

21 written proposals?

22 A. No.

23 Q. Okay. What about with respect to Devon --

24 Devon Securities, is it?

25 A. I went through the original proposal, went

0150 1 through the details and the 25,000 square foot and so  
2 forth.

3 Q. Who prepared the original proposal for Devon  
4 Securities? Who prepared it?

5 A. Initially, it was prepared before -- Devon  
6 Securities -- all of this was in the works before the  
7 23rd of December.

8 Q. Okay.

9 A. And Scott Porter is the leasing agent for --  
10 all of the properties are leased by outside brokers, by  
11 third-party brokers. So Scott Porter is the coordinator  
12 with the -- I believe it is Grubb & Ellis.

13 Q. Okay. So who prepared the first written  
14 proposal for Devon Securities?

15 A. Prior to the bankruptcy, Mr. Porter did.

16 Q. And your testimony is that you have seen that  
17 written proposal?

18 A. No, my testimony -- on HCA?

19 Q. No, on Devon Securities.

20 A. On Devon Securities, I glanced at it. I just  
21 took a look at it and got an idea. I saw the 25,000  
22 square feet. And we just -- he said he's going to get  
23 the rest of it to me for approval.

24 Because, bear in mind, when I get to that  
25 point, now we have got to talk about who is going to pay

0151 1 for the tenant finish. So I want to be sure they have  
2 got everything pinned down before I do that.

3 Q. Okay. I'm going to make a request for  
4 production of a copy of the written proposals for Devon  
5 Securities and HCA.

6 A. No problem.

7 INFORMATION REQUESTED: \_\_\_\_\_

8 Q. Let's talk about those tenant finishes. What  
9 is HCA requesting?

10 A. Requested?

11 Q. What are they requesting?

12 A. In tenant finish?

13 Q. Yes, before they move in.

14 A. \$25 a square foot.

15 Q. Okay. But what are they asking in the way of  
16 building out the space?

17 A. \$25 a square foot.

18 Q. Okay. Who is going to pay for that?

19 A. That's my question. That's the issue -- the  
20 issue now is, now that we have got a tenant, how do we  
21 pay -- now that we have got a prospective tenant, how do

Morgan, Richard 01-27-11.txt

22 we pay for it. And I have to present a plan to the  
23 Court to do it.

24 Q. But based on your understanding, when would  
25 HCA move into the building?

0152

1 A. It would be about somewhere in the  
2 neighborhood of May, June, something like that.

3 Q. And how long would it take, assuming you had  
4 the funds to build out that space?

5 A. About that -- it would take about 60 days, 60  
6 to 90 days total.

7 Q. What would be required to build out that  
8 space?

9 A. In what sense?

10 Q. How much money?

11 A. Maybe you are not listening to me. The  
12 allowance is \$25. If they spend 40, it doesn't matter.  
13 The landlord's responsibility is \$25.

14 Q. Okay. You weren't clear. What about with  
15 respect to Devon Securities? What did the tenant --

16 A. I don't remember the tenant finish on that. I  
17 will get you the proposal. We will get that to you.

18 Q. Okay. When is Devon Securities proposing to  
19 move in?

20 A. September, October.

21 Q. Of 2011?

22 A. Yes, uh-huh.

23 Q. Okay. So at this point in time there are no  
24 signed leases with HCA, correct?

25 A. Couldn't.

0153

1 Q. And same with Devon Securities, there are  
2 no --

3 A. I couldn't.

4 Q. -- signed leases?

5 A. Understand the process. I can't sign a lease  
6 right now. What I have to do is get the tenants, get  
7 the business plan tied down, come up with a plan that I  
8 can go to the Court with, this is how we are going to  
9 pay for it. And I can't do that until I have got the  
10 proposal.

11 Q. As you sit here today, do you have a plan on  
12 how you are going to pay for those --

13 A. Not yet.

14 Q. -- expenses?

15 A. Not yet. I think the answer is going to have  
16 to come in some type of debtor in possession financing,  
17 but I don't -- I don't have that plan.

18 Q. Okay. Besides these two tenant issues, what  
19 else have you done with respect to trying to increase  
20 the tenants at the Fenton building?

21 A. Increase the tenants?

22 Q. Yes.

23 A. Well, we are working with Grubb & Ellis. We  
24 are working with the actual brokers. Those are the two  
25 prospects. I have not gone through the total market.

0154

1 What I was focusing on, if you look at  
2 the 125,000 square foot, that's about 15 percent  
3 occupancy. So that brings us up into the 72, 73 percent  
4 range. As I mentioned earlier, my focus is to get it to  
5 79 percent. That's what the market is right now.  
6 That's the primary goal is to get it up to 79 percent



Morgan, Richard 01-27-11.txt  
initially. And at 79 percent, it will be a very  
valuable property.

Q. Let's assume you can get it up to that 72  
percent occupancy, what would you do next?

A. Most likely sell it. I think that the --  
there is -- there is a thin line between the value that  
a buyer is going to put on existing vacant space, a thin  
line there. Much as if I was selling you something, you  
would only accept so much risk in the process. And  
that -- that risk has to be reduced to the point where  
the seller feels -- the buyer feels he's getting a  
decent cap rate on today's income and sees the future.  
And I think that is an 80 percent range.

Q. And when do you believe you would want to sell  
the property?

A. If all of this happens, we would be ready to  
talk about selling it somewhere around the end of the  
year, the third quarter, or putting it up for the  
market. You don't sell it right away.

Q. What is your plan if HCA and Devon Securities  
do not agree to become tenants at this property? What  
would you do next?

A. Keep marketing.

Q. And when you say keep marketing, you are  
talking about marketing tenant space or marketing the  
sale of the building?

A. Marketing the tenant space. I don't think it  
is a marketable property right now.

Q. At this -- as you sit here today, you have not  
taken any efforts to sell the building?

A. No.

Q. You have not retained a broker to sell the  
building?

A. No.

Q. You have not spoken with any potential  
buyers --

A. No.

Q. -- for the building?

A. No.

Q. And you have not personally spoken with HCA --

A. No.

Q. -- as the chief restructuring officer?

A. You don't do that. That's just not -- that's  
not the way --

Q. I'm just asking the question.

A. No, you don't. I mean, you let the broker --  
the broker is the intermediary, and he's dealing with  
another broker from HCA. So you have to let the brokers  
do their job.

Q. And I assume you have also not spoken with  
anybody at Devon Securities?

A. Beg your pardon?

Q. You have not spoken with anybody at Devon  
Securities?

A. No, that's, again, another broker situation.

Q. Earlier today Mr. Weitman spent some time  
talking to you about the -- what we have marked as, I  
think, Wells Fargo 167. If you can turn your attention  
to Exhibit 3.

A. Okay.

THE WITNESS: Can you help me get that?  
Page 65

Morgan, Richard 01-27-11.txt  
18 Q. (BY MR. KIM) This is information for initial  
19 debtor interview. I believe it was marked as 167,  
20 Exhibit 3.  
21 MR. BUNCHER: It is right here.  
22 THE WITNESS: Okay. Sorry.  
23 A. Yes, sir.  
24 Q. (BY MR. KIM) I want to direct your attention  
25 to the column where it says value, the second column.  
0157  
1 Do you see it?  
2 A. Yes.  
3 Q. Okay. Do you know who reviewed or prepared  
4 the numbers that were inserted into the value column?  
5 A. Yes. This was a combination of the -- to the  
6 best of my knowledge, I don't remember the exact detail  
7 of the -- of what they had on the books as the equity in  
8 the building and the -- and the debt.  
9 Q. Okay. Who actually prepared Exhibit 3, if you  
10 know?  
11 A. Greg Owen.  
12 Q. I'm sorry?  
13 A. Greg Crown. I'm sorry.  
14 Q. Greg Crown --  
15 A. Yes.  
16 Q. -- prepared this exhibit?  
17 A. Yes.  
18 Q. And who is Greg Crown?  
19 A. Greg is an employee of Prime Asset assigned to  
20 me to prepare all the schedules.  
21 Q. Did you do anything to assist Greg in  
22 preparing the numbers set forth in the value column?  
23 A. No. The value column, as I mentioned earlier,  
24 all of those values were set relative to the way the  
25 deal was going to be structured coming down, which I had  
0158  
1 an opportunity to review and see if I conceded -- I  
2 agreed that those values were indeed there.  
3 Q. What is the date of value reflected in this  
4 column?  
5 A. The date of the value?  
6 Q. Yes.  
7 A. Would be as of the 23rd of December.  
8 Q. Do you know if there are any appraisals that  
9 Mr. Crown reviewed in preparing his valuation numbers?  
10 A. I'm not saying Mr. Crown did prepare the  
11 valuation numbers.  
12 Q. I'm not asking that question. I'm asking, do  
13 you know if he reviewed any appraisals?  
14 A. I do not know.  
15 Q. Okay. Have you reviewed any appraisal  
16 reports --  
17 A. No.  
18 Q. -- for any of the properties?  
19 A. No.  
20 Q. Have you reviewed an appraisal report for the  
21 Fenton property?  
22 A. No.  
23 Q. So where it says -- it provides a value of  
24 \$67,000 for the Fenton Centre building, you have not  
25 reviewed any documentation to --  
0159  
1 MR. WEITMAN: 67 million.  
2 Q. (BY MR. KIM) I'm sorry. -- 67 million, you  
Page 66

*No Appraisals*

Morgan, Richard 01-27-11.txt  
3 have not seen any appraisal reports or any other  
4 documents to support that valuation number?

5 A. Oh, quite contrary. I have reviewed the  
6 operating statements, and I have reviewed the budgets.  
7 And I have seen what the impact of increased occupancy  
8 would do to the value.

9 Q. But you just testified --  
10 MR. BUNCHER: Let him finish his answer,  
11 please.

12 MR. KIM: I'm sorry.  
13 A. I have seen what the increased occupancy would  
14 do to the value. And based on the current interest we  
15 have right now -- plus you may have seen this, but there  
16 was an article about four weeks ago talking about the  
17 Dallas market overall. And it essentially said that  
18 there would be a rebuilding -- building should be  
19 started somewhere in the late 2011, early 2012.

20 This particular property sits in a unique  
21 position because there is about to be a major  
22 reconstruction of 635 running from Interstate 35  
23 slightly to the east all the way over to Interstate 75.  
24 That's going to be a major upheaval.

25 So it mentioned in this report -- and I

0160

1 will try to find that article and send it to you, if you  
2 would like. It mentions that the submarket, the Las  
3 Colinas and this particular market we are in right now,  
4 are in a perfect position to gain the lion's share of  
5 that because we won't be hampered by all of that  
6 construction.

7 This property also sits right in the  
8 apex -- or in the congruent -- where it all comes  
9 together of Highway 116, which is the Bush Freeway, and  
10 635 and 35 to the west. So it's a -- and 6.7 miles to  
11 the airport, maybe 10 miles. But it is within the heart  
12 of what we think is going to be the coming market and to  
13 take advantage of the new tenants that are coming in.

14 Q. (BY MR. KIM) Besides this report that you are  
15 referring to, what other documents did you review that  
16 leads you to believe that the building has a current  
17 value of \$67 million?

18 A. Value is construed by an appraiser. Value is  
19 a function of three components, as you know. Do I need  
20 to explain this to you?

21 Q. Yes.

22 A. Good. There are -- the three components are:  
23 Comparables, what other buildings have sold for. Very  
24 few buildings have been sold. The second is a  
25 combination of the replacement value. And, quite

0161

1 candidly, you couldn't replace that property right now.  
2 700,000 square feet with parking garages would be in the  
3 \$135-, \$140 million range. And the third category is  
4 economics.

5 But balanced with those economics and the  
6 numbers we are looking at today is what value do you  
7 place on the vacant space? Because regardless of the  
8 fact that \$25 has to be spent to bring in a tenant, it  
9 also means that \$140 had already been spent creating the  
10 infrastructure and the parking garages and everything  
11 that makes it work. Okay.

12 So how do you value it? You have to  
13 value it with a combination of all those three.

Morgan, Richard 01-27-11.txt

14 Q. But you have not conducted that valuation  
15 process, correct?  
16 A. I certainly have.  
17 Q. You have?  
18 A. I certainly have.  
19 Q. And who did you commission to do that  
20 valuation?  
21 A. I didn't commission to do it. I'm an  
22 experienced real estate -- experienced in managing and  
23 developing real estate. So I knew from the standpoint  
24 of just looking at the economics alone, if you use a 7  
25 cap, which I did, if those two tenants go in, that  
0162 1 raises the value -- the sale value -- forget the value  
2 of the vacant space -- to \$81 million. Just those two  
3 tenants alone at a 7 cap rate, which is a reasonable  
4 rate to expect if you are buying on income alone in that  
5 kind of area.  
6 Q. But you are not a licensed real estate  
7 appraiser, correct?  
8 A. I have bought and sold over 600 million square  
9 feet of real estate as principal and as exclusive  
10 representative.  
11 Q. But the question is: You are not a licensed  
12 real estate appraiser, correct?  
13 A. I am not a licensed real estate appraiser.  
14 Q. Mr. Morgan, who do you report to on a daily  
15 basis?  
16 A. Pardon?  
17 Q. Who do you report to on a daily basis at FRE?  
18 A. I don't have to report to anybody on a daily  
19 basis.  
20 Q. And who reports to you at FRE?  
21 A. Nobody. I'm it.  
22 Q. Who is --  
23 A. Who reports to me -- I stand corrected. Regis  
24 Property Management reports to me and eventually the  
25 brokers that work for them report to me. The -- as we  
0163 1 get involved in marketing the land, those brokers will  
2 eventually report to me and whoever is coordinating  
3 those land sales will report to me.  
4 But I don't have anybody on a payroll.  
5 I'm not burdening this debtor with a bunch of overhead.  
6 Q. So you do not report to anybody?  
7 A. I report to Ron Akin. But Ron Akin has got  
8 his own world, and he's depending on me to handle it.  
9 Q. How often do you speak to Ron Akin about FRE  
10 matters?  
11 A. Not very often. I have known Ron for  
12 thirty-five years. And we can talk in the hallway and I  
13 can catch him up. But he's not a micromanager.  
14 Q. How about Craig Landess?  
15 A. Craig Landess is a vice president, but he's  
16 not involved in the management at all.  
17 Q. How often do you speak with Craig?  
18 A. Very infrequently.  
19 Q. What is Craig's current duties and  
20 responsibilities with respect to the --  
21 A. He doesn't have a direct responsibility as far  
22 as what I'm doing.  
23 Q. How about Terry Shumate?  
24 A. Terry is a retired director, retired owner and  
Page 68

Morgan, Richard 01-27-11.txt  
25 director. So he's not involved on a daily basis.  
0164  
1 Q. He's not involved in the day-to-day business  
2 of FRE?  
3 A. No.  
4 Q. And who comprises your staff at FRE?  
5 A. Me.  
6 Q. Just you?  
7 A. Me.  
8 Q. You are the only person in the office?  
9 A. Yes.  
10 Q. You don't have a secretary?  
11 A. No.  
12 Q. You don't have a clerk? You don't have  
13 anybody that helps you in the office?  
14 A. Well, I told you -- I mentioned ago, I have  
15 Greg Crown, who is at my disposal, to prepare all the  
16 schedules. I have got the land people, Henry Butler,  
17 that is familiar with most of these lands, and R.L.  
18 Lemke, who put the land together. I have got the Regis  
19 people downstairs and their leasing people that I know  
20 very well. And all of those people are at my disposal.  
21 But I don't have to go -- and I don't -- you know, I  
22 don't have to get involved in the technical presentation  
23 of these schedules and so forth. Greg and his assistant  
24 does that.  
25 Q. Let me turn your attention to Exhibit 3 again,  
0165  
1 part of the Exhibit Wells Fargo 167.  
2 A. Yes, sir.  
3 Q. How many of these properties are income  
4 producing?  
5 A. Roughly seven.  
6 Q. Which seven? Can you identify them?  
7 A. I can. They are Fenton Centre, Amoco  
8 Building --  
9 Q. Hold on. I'm sorry.  
10 A. Fenton, Amoco Building --  
11 Q. Can you do it by looking at the list?  
12 A. Oh, sure. Just go down the list?  
13 Q. Yes.  
14 A. So Fenton Centre is the first. Parkway is the  
15 second.  
16 Q. Parkway North Office Building?  
17 A. Okay. Bridgewood Ranch Apartments, which is  
18 on the second page.  
19 Q. Okay. That's three.  
20 A. Amoco Building.  
21 Q. Four.  
22 A. Westgrove Air Plaza.  
23 Q. Okay.  
24 A. That's it.  
25 Q. So five?  
0166  
1 A. Yeah.  
2 Q. We already talked about Fenton Centre. I want  
3 to talk to you about the other four income producing  
4 properties you just mentioned. What is your plan with  
5 respect to those four income producing properties, as  
6 you sit here today?  
7 A. All right. I will address them one by one.  
8 Q. Yeah. Let's start with the Parkway North  
9 office Building.

Morgan, Richard 01-27-11.txt

10 A. Parkway North Office Building. I don't  
11 remember the exact occupancy. We have about 17,000  
12 square feet working right now. When that happens, it  
13 will bring it on up to 79, 80 percent occupancy and I  
14 think it will be in a position to sell.

15 Q. Well, hold on, before we move on.

16 A. Pardon?

17 Q. I didn't understand. You are looking for  
18 tenants for that building?

19 A. No, we have tenants in the works. We have  
20 17,000 square foot of tenants in the works right now,  
21 7,000 of which are on the verge of being done. It is a  
22 very simple deal. 10,000 square foot tenant will  
23 require some tenant finish.

24 The Amoco Building, there's about 14- to  
25 16,000 square feet of tenants working right now that --

0167

1 in the process of getting approval and getting done.  
2 That will take it up to -- the market there is 88  
3 percent. And that will take it up to, I think, about  
4 86, 87 percent, something like that.

5 Q. You are talking about occupancy?

6 A. Yeah.

7 Q. Okay.

8 A. Westgrove is more of a challenge. It shows at  
9 57 percent, but it is partial hangar and partial office.  
10 And if you separate the hangars, which are full, from  
11 the office, that's more of a challenge. And I just have  
12 not had time to focus on that one.

13 Q. And what about Bridgewood Ranch Apartments?

14 A. Bridgewood Ranch Apartments is 90 percent  
15 occupied. There's not much more you can do to make it  
16 better. The only thing -- basically, it is  
17 cross-collateralized with ABC on some other assets,  
18 apartment land primarily. So my focus is to pay -- I'm  
19 going to focus selling the apartment land first.

20 Q. The Bridgewood?

21 A. No, no.

22 Q. I'm sorry.

23 A. Bridgewood has -- it has a piece adjacent to  
24 it, which is not part of the -- not part of the ABC  
25 collateral, another collateral, just 5 acres next to it.

0168

1 I want to get that sold to an apartment developer.

2 Limestone, which is part of the ABC  
3 collateral, that's adjacent to a very successful  
4 Limestone Apartments. I will be marketing that as  
5 quickly as I can.

6 Q. Marketing for sale?

7 A. Yes, marketing for sale.

8 There is 10 acres in Temple, Texas, which  
9 was bought for an apartment complex, zoned for that. It  
10 was just never done. I will be trying to market that.

11 And then the Thermalloy building is a  
12 unique little concept. It is about a 6,000 square foot  
13 building on 3-1/2 acres. But it sits just right on the  
14 outer edge of Las Colinas. It is really a unique  
15 situation for an architectural office or a single user.

16 Q. You are talking about Thermalloy? I'm sorry.

17 A. No, I'm talking about the Teleport building.

18 Q. The Teleport building?

19 A. Thermalloy building is really a land --

20 Q. Yeah. I thought I heard you say Thermalloy.

Page 70

Morgan, Richard 01-27-11.txt

21 I'm sorry.

22 A. I may have said Thermalloy.  
23 The Teleport building is 3.6 acres and it  
24 sits at the corner of -- it is at Senlac and -- Senlac  
25 and Valley View. It is a warehouse -- a big warehouse.

0169 1 You might find a user for it. I don't know. But it is  
2 a big warehouse.

3 Q. Just going back to the four properties you  
4 just talked about, Parkway North Office Building,  
5 Bridgewood, Amoco, and Westgrove.

6 A. Right.

7 Q. Is it fair to say that your goal is ultimately  
8 to sell those properties?

9 A. Yes.

10 Q. At this point in time, have you retained a  
11 broker to assist you in connection with the potential  
12 sale of those buildings?

13 A. No. I'm hampered with the Bridgewood because  
14 this other collateral is there. I need to reduce -- I  
15 can't sell just Bridgewood because I have got that other  
16 cross-collateral with it. So we are going to have to  
17 get that worked out somehow. My goal is to sell the  
18 apartment land first and then market Bridgewood.  
19 Because if we have the money to reduce the first lien  
20 debt, that makes the sell of Bridgewood more profitable.

21 Q. But as you sit here right now, you don't have  
22 a real estate broker that's working with you in  
23 connection with any of these properties?

24 A. I think I explained --

25 Q. The ones you just mentioned.

0170

1 A. All of them are like that. I can't tell  
2 you -- except Bridgewood. The rest are just not quite  
3 ready. They need a little more work to get them ready.

4 Q. Now, is it fair to say, besides the five you  
5 just mentioned, all the other properties listed in  
6 Exhibit 3 are raw land properties?

7 A. No. The Thermalloy building, which I  
8 mentioned to you, is cross-collateralized with the  
9 NexBank collateral, your collateral. If a property  
10 goes, the sale of property, that should be one of the  
11 first ones to go.

12 Q. So your goal with respect to Thermalloy is to  
13 sell it?

14 A. My goal for Thermalloy is to sell the land.

15 Q. Sell the land?

16 A. It is worth more as land than it is a  
17 building.

18 Q. But the Thermalloy property?

19 A. Thermalloy property. And to sell the land,  
20 the 6.6 acres that you have for collateral -- as  
21 additional collateral. That's my goal.

22 Q. But you don't have a broker retained at this  
23 point in time?

24 A. I do not. I do not. And that's an aspect of  
25 what we are having to review right now.

0171

1 Because I'm anticipating that we are  
2 going to have to reach some agreement with everybody as  
3 to who markets what. There's some -- you know, there's  
4 some cross-pollination there of assets that we will have  
5 to decide.

Morgan, Richard 01-27-11.txt

6 It would be improper to have somebody  
7 else market, for example, the Armed Forces' property at  
8 Mercer Crossing. It would be improper to have somebody  
9 market that and then have a competing broker marketing  
10 your land. We have to come to some concert of who is  
11 going to be the first person to market the property.

12 Q. So are you saying that you would like to  
13 engage in discussions with the lenders on the process  
14 for marketing these properties?

15 A. I don't think I have any choice. Yes.

16 Q. Okay.

17 A. Actually, you are not saying you want to be a  
18 partner; but we are. If we are going to make it  
19 better -- we are going to have to do two things. We  
20 have got to create value. If we don't create value,  
21 then your value is not there to pay off your loan. So  
22 working together in trying to create value to pay you  
23 off, that's my goal. And, hopefully, there will be  
24 something left on the back side.

25 Q. For your success fee?

0172

1 A. Yes.

2 MR. KIM: I think I'm done. I reserve  
3 the right to come back if I have any other questions.

4 EXAMINATION

5 BY MR. MALONEY:

6 Q. I'm William Maloney representing Armed Forces  
7 Bank.

8 A. Okay.

9 Q. I would like to use as a reference the cash --  
10 I think this is in several different places -- but the  
11 Cash Collateral Motion, I think, is Wells Fargo Exhibit  
12 174, if I made a proper note of that.

13 A. You did.

14 Q. And Exhibit A is, I think, the same thing you  
15 were just looking at a few minutes ago with a different  
16 number. But I would like to use the one that's attached  
17 to the Cash Collateral Motion. It is also labeled  
18 Information for Initial Debtor Interview, Question No.  
19 7.

20 A. Okay. I'm with you.

21 Q. Okay. The Armed Forces properties on this are  
22 the McKinney Ranch, Kinwest Tract, Payne-North, Pioneer  
23 Crossing, and Valwood Mercer Crossing.

24 A. Yes.

25 Q. And none of those were identified by you a few  
0173 minutes ago as an income producing property.

1 A. Let me find that Valwood Mercer Crossing. I  
2 need to --

3 Q. It is on the last page.

4 A. I just want to refresh my memory. Okay.  
5 That's your -- okay. I'm with you now.

6 Q. Okay. None of these were identified as income  
7 producing properties when you identified income  
8 producers a few minutes ago.

9 Can you describe the nature of each of  
10 these properties, if you know them?

11 A. I do. Are you ready?

12 Q. Yes, sir.

13 A. All right. You call them out and I will give  
14 you the nature of --

15 Q. McKinney Ranch?  
16



Morgan, Richard 01-27-11.txt

17 A. McKinney Ranch is sitting next to a very  
18 successful development. Of all the properties that will  
19 probably move fast, I think that would be it. It is  
20 properly zoned. And looking at it just from an aerial  
21 standpoint, it is a very marketable property.

22 Q. But its present state is undeveloped ground?

23 A. Adjacent to developed property, yes.

24 Q. How about the Kinwest?

25 A. Kinwest is a small tract -- it is a small

0174

1 strip of land, not very deep, but it's in and around the  
2 Columbia exit over there -- all fronting on 635. It  
3 backs up to Hackberry Creek, which is a very successful  
4 single family subdivision. Obviously, the exposure -- I  
5 mean, the traffic count on that thing is absolutely  
6 horrendous. The exposure is good. Coming up with a  
7 plan to use it is the next thing. And I have to work  
8 very carefully finding the right user who will build it  
9 for things like offices.

10 Or one of the big things going right now  
11 is the individual condo offices where you come in in  
12 situations like this and you build an office and you  
13 sell off four units within that. That's a very hot  
14 thing that I think might work for it.

15 But it has tremendous exposure right off  
16 635 and good access. There's another piece, which is  
17 not in your collateral, called Hunters, which ties in to  
18 the Columbia Road access and provides access to this  
19 piece of property.

20 Q. Payne-North, also undeveloped?

21 A. Payne-North is -- that is a great tract. It  
22 is at the intersection of 114 and Belt Line. And it is  
23 a great tract of land. There is actually some interest  
24 on that right now.

25 Q. Pioneer Crossing, undeveloped?

0175

1 A. Pioneer Crossing, I'm not that familiar with.  
2 It is -- I know it is on Lamar Boulevard in Austin,  
3 Texas. It is part of a master planned deal. It is very  
4 close to the Samsung plant down there. But I haven't  
5 been to see that to get a specific feel on that.

6 Q. And then finally there's the Valwood/Mercer  
7 Crossing, 257 acres. What's it -- do you know anything  
8 about it?

9 A. I know all about it. It is a  
10 conglomeration -- not a conglomeration. It is a piece  
11 of land, which a part of it was on Mercer Crossing  
12 complex. It basically starts on -- fronts on Valley  
13 View and winds around and comes down the existing,  
14 already improved boulevard, and comes in behind the  
15 existing 1800 building, sort of an odd shape piece. But  
16 that's the way it was zoned.

17 Q. You were careful to explain with regard to the  
18 income producing properties that -- where you had  
19 cross-collateralization, you might use income from one  
20 property to pay the expenses of a cross-collateralized  
21 property owned by -- or pledged to the same lender?

22 A. I think we said the same thing. I'm not going  
23 to allow -- I'm not going to get the basket outside of  
24 their collateral pool.

25 Q. Okay. What are you going to do with these

0176

1 five properties which don't have any income coming in?

Morgan, Richard 01-27-11.txt

2 A. I think I mentioned that briefly to Mr.  
3 weitman. There's -- the challenge there, obviously, we  
4 have to provide some kind of adequate protection. So  
5 providing adequate protection comes from one or two  
6 sources. It either comes from an investor pool that I  
7 put together that does that in anticipation of getting  
8 some part of the profit, or it has to come from TCI or  
9 one of their related entities. I'm pursuing the first.

10 Q. This would be -- your initial effort is going  
11 to be to find new blood that wants to put cash into  
12 this?

13 A. Exactly.

14 Q. And how far are you along on that path?

15 A. Only on a concept standpoint. I have only had  
16 this, you know, just a few days. So the -- I do have  
17 the concept plan put together and am in the process of  
18 testing the waters on how that will go.

19 Q. And why are you looking there first instead of  
20 a TCI entity?

21 A. Well, I said that -- bear in mind that there's  
22 a note from TCI. Now, that note has to be -- if they  
23 want to protect it, then they are going to have to put  
24 up more money to protect it if I can't raise it from  
25 another source, or not. And if they don't, then the

0177  
1 next step is very simple.

2 MR. WEITMAN: That's a note to TCI, not  
3 from.

4 THE WITNESS: That's right.

5 Q. (BY MR. MALONEY) But at the present time you  
6 don't have any commitment for additional capital?

7 A. I do not have a written commitment for  
8 additional capital at this time.

9 Q. Has anybody given you a verbal commitment for  
10 additional capital?

11 A. No.

12 Q. You described your initial meeting with -- I'm  
13 sorry -- I believe it was Mr. Moos and Mr. -- who was  
14 the other person on the 23rd of December?

15 A. Ron Akin.

16 Q. Ron Akin. At that time they had already made  
17 the transfers. We now have the written documents from  
18 that. They are all dated on the 23rd of December. And  
19 you said you looked over it basically the Christmas  
20 weekend, communicated to them your interest in taking  
21 the assignment, then proposed. And then I think you  
22 said you didn't do much until January 4th?

23 A. No, I just said I didn't get real active until  
24 January 4th. Active in the sense of, I evaluated it.  
25 But spending a lot of time on it, I didn't. The

0178  
1 Christmas holidays were there, and I just didn't spend a  
2 lot of time on it.

3 Q. Even on the very first discussion on the 23rd,  
4 was it made clear that bankruptcy was one of the first  
5 orders of business for the FRE Real Estate?

6 A. Yes.

7 Q. Okay. So you knew from the beginning that it  
8 was headed to bankruptcy court?

9 A. Right.

10 Q. Were you involved much in the -- it was filed  
11 on the 4th. Were you involved much in the preparation  
12 of that?

Morgan, Richard 01-27-11.txt

13 A. In the preparation of the bankruptcy filing?  
14 Q. Yeah.  
15 A. Most of that was done by Mr. Crown and whoever  
16 he had working with him.  
17 Q. And then the attorney at that time was a Mr.  
18 Lewis?  
19 A. Right.  
20 Q. By the time -- you know, if I understand it  
21 right, the bankruptcy was filed on Tuesday, the first  
22 Tuesday of the month, which is the Texas day of  
23 foreclosure sales.  
24 By the time January 4th came around, were  
25 you aware that at least some of these properties had  
0179 been posted for foreclosure on that day?  
1 A. I was not.  
2 Q. You were not. I apologize. I can see you  
3 with my glasses on. I can see the paper with them off.  
4 I have to switch back and forth.  
5 A. I hear you.  
6 Q. As far as what was communicated to you, you  
7 didn't -- you were the restructuring officer at this  
8 time. But as of January 4th was anybody saying to you  
9 that we need to file bankruptcy in order to avoid losing  
10 this property?  
11 A. No.  
12 Q. And just for the record, you are saying no?  
13 A. I'm saying no. There is --  
14 Q. You were shaking your head. That's why I said  
15 that.  
16 A. No, I'm not shaking my head. I'm just saying,  
17 no one mentions specifically the bankruptcy. Obviously,  
18 they don't go into this pool for that purpose unless  
19 there are troubled properties in some fashion, or about  
20 to be.  
21 Q. You explained to Mr. Kim -- I want to make  
22 sure I understood something. You said as early as the  
23 23rd you knew that a bankruptcy was in the works for  
24 FRE?  
25  
0180 1 A. Yes.  
2 Q. And on the 4th you knew it was being filed?  
3 A. Yes.  
4 Q. And you signed the --  
5 A. Yes.  
6 Q. -- petition.  
7 Back on the Exhibit A to the Cash  
8 Collateral Motion, I don't want to retread ground, but  
9 there for the first time is a column with the label  
10 value on it.  
11 A. Right.  
12 Q. Because there is a sale summary, I believe,  
13 that was prepared, perhaps by your attorney, that's  
14 Exhibit No. 168 that provides similar, but a little bit  
15 different, information. It provides, you know, for each  
16 one the property name, the selling party, purchasing  
17 entity. And its first column of numbers is sale price  
18 rather than value. But at least on the five properties  
19 my client has an interest in, the sale price and value  
20 are always the same. You know, for instance, McKinney  
21 Ranch on Exhibit 167 has a \$5.4 million value --  
22 MR. BUNCHER: 168. Exhibit 168.  
23 MR. MALONEY: 168 is the sale.

Page 75

Morgan, Richard 01-27-11.txt

24 MR. BUNCHER: Right.  
25 MR. MALONEY: No, I think I said it

0181

1 right. On 167, it is a \$5.4 million value --  
2 MR. BUNCHER: No, 174 is the other one,  
3 Cash Collateral exhibit.  
4 MR. MALONEY: Yes, you are right. Thank  
5 you.

6 Q. (BY MR. MALONEY) Where Exhibit 174, which is  
7 Exhibit A to the Cash Collateral Motion, just, for  
8 example, using the McKinney Ranch, \$5.4 million value  
9 and the Exhibit 168, \$5.4 million sale price, can you,  
10 in a nutshell -- because I know you have explained some  
11 of this before in a little bit different  
12 circumstances -- how you came up with those two numbers?  
13 They are the same number, but --

14 A. No. As I mentioned, the value that we put on  
15 it almost goes straight to what we paid for it. The  
16 value here is what we paid for the deal.

17 Q. Yes.

18 A. So we are not contending anything is worth  
19 more than what we paid for it initially, I don't think.

20 Q. And whereas to the previous -- to Mr. Kim, you  
21 gave a fairly detailed explanation of how you came up  
22 with these value figures -- and so we don't have to  
23 repeat it -- is that the same process you came up with  
24 to reach the sale price?

25 A. Say that again.

0182

1 Q. Mr. Kim was asking you questions and you  
2 explained how you came up with the value number on  
3 Exhibit 174?

4 A. No, it is a different process. You know,  
5 there are so many factors involved in evaluating  
6 improved real estate, as I mentioned to you. There's a  
7 lot of factors. The only value relative to the land is  
8 either what the comparables are or what the -- what is  
9 perceived to be the going rate per square foot in these  
10 cases as to what the land is going for.

11 The comps in that case show that the  
12 sales were in excess of the \$5 a square -- roughly \$5 a  
13 square foot this land was. And I'm using a rough  
14 calculation as far as McKinney Ranch is concerned.

15 But sales had occurred in this area in  
16 excess of that area right adjacent to it that was sold  
17 also by whoever the entity owning it was.

18 Q. Are you saying you used two different  
19 processes and in every instance came up with, for each  
20 property, the same number as a value and the same number  
21 as a sale price?

22 A. No. There are two different values. Okay.  
23 The value that we reported for the Bankruptcy Court is  
24 the value we paid for it. My perceived value as to what  
25 this land could be worth is a whole different number.

0183

1 My question was: Can I make any money  
2 doing this?

3 MR. BUNCHER: I think he's just asking if  
4 the value number on this Exhibit 174 was just the same  
5 number you had as the sales price on --

6 THE WITNESS: It should be purposely the  
7 sales price.

8 Q. (BY MR. MALONEY) On the portion of Exhibit  
Page 76

Morgan, Richard 01-27-11.txt

174 that we have been looking at, which is also Exhibit A to the Motion For Use Of Cash Collateral, you have got lienholders listed and --

A. You have got to get me to the right schedule now. I'm looking at this -- are we looking at the same page?

Q. I believe so. It is not the sale report. It is the exhibit to Cash Collateral --

MR. BUNCHER: 174, right here.

A. Okay.

Q. (BY MR. MALONEY) McKinney Ranch entry shows Armed Forces Bank, NA, as a lienholder?

A. Uh-huh.

Q. It also shows Propel Financial Services. Do you know what that is?

A. Yes. Propel is the company that basically buys the tax and refinances them.

Q. There's a \$67,000 and change entry on McKinney Ranch. Was that for the 2009 taxes that became due in 2010?

A. I can't tell you that. I don't know specifically.

Q. Was that lien there at the time of the bankruptcy filing?

A. As far as I know.

Q. Yes, it would have been.

Do you know -- I looked at their website. And from what it looked to me -- maybe they do two different things -- it looks like they market themselves for people to say, come loan us money to pay our property taxes. I have heard other people describe it that under Texas law, you can go pay somebody's property tax and stand in the shoes of the Government with the lien.

Do you know how Propel came to be involved on these properties?

A. I know they are being perceived -- in my mind, they are perceived as a financing entity, not owning the lien, not owning the tax lien, but financing to pay off the taxes. It could be -- it could be incorrect. I'm not sure.

Q. How do you think -- if you know, how does

their lien compare in priority with the Armed Forces Bank lien?

A. I don't know. But if it is a tax lien, they are ahead of you.

Q. Yes. Do you know if -- as regarding to McKinney Ranch, whether the taxes that became due January 31, 2010, were paid?

A. I don't know that.

Q. Do you mind, if for convenience sake, I'm going to refer to the Armed Forces Bank's property as -- by that, I mean the five that we have looked at, McKinney Ranch, Kinwest, Payne-North, Pioneer Crossing, and Valwood/Mercer Crossing.

As to the Armed Forces Bank property, do you have any wherewithal to pay the taxes or income due in about a week from now, January 31st, for the 2010 taxes?

A. Not to my knowledge.

Q. Is there any plan to seek some sort of

Page 77

Morgan, Richard 01-27-11.txt

20 financing again for, you know, a post petition loan to  
21 pay these taxes?

22 A. I'm speaking as a layman who understands  
23 something legal. Okay. As I understand it, the real  
24 estate taxes are automatically financeable for a  
25 five-year period from the due date at 6 percent

0186

1 interest. That's an automatic in Texas.

2 Q. But each year they go -- well --

3 A. You have to keep the taxes current and then  
4 pay up -- I understand.

5 Q. And until it is paid, do they constitute as a  
6 tax lien that would be of higher priority than a  
7 voluntary lien that was granted to a bank?

8 A. That's getting to an issue I don't know.

9 Q. The transfer documents are dated December  
10 23rd, the -- there were deeds executed, at least the  
11 ones I have looked at. I haven't looked at anybody's.  
12 But as to the Armed Forces Bank properties, there was a  
13 warranty deed -- I forget if it was general or  
14 limited -- signed on December 23rd for each of the  
15 properties that secure our loans. And they were all  
16 filed on January 4th rather than closer to the time they  
17 were executed.

18 Do you know why there was a delay in  
19 filing each of those -- and when I say filing, I mean,  
20 recording each of those deeds?

21 A. Well, I can't attest that that was the case.  
22 If you are telling me that is the case, I don't have an  
23 expectation for it.

24 Q. Were you involved in recording them?

25 A. No.

0187

1 Q. Do you know if there was any similar documents  
2 as in a -- the bank of -- I'm sorry -- the Armed Forces  
3 Bank documents, basically a sale agreement, by which the  
4 FRE purchases the assets and assumes the liabilities of  
5 the previous borrowers, do you have any knowledge of  
6 similar agreements that were executed but never  
7 recorded?

8 A. You mean outside the bankruptcy?

9 Q. Right. I'm saying, for all I know, there are  
10 ten more companies with those agreements executed that  
11 something changed, they were never recorded, and now  
12 they are gone. And I'm asking you -- you know, they  
13 only became public knowledge on January 4th when they  
14 were recorded.

15 were there any other similar arrangements  
16 that were --

17 A. I don't understand your question.

18 Q. -- never recorded?

19 A. I really don't.

20 MR. BUNCHER: Yeah, I don't understand it  
21 either. Maybe you can rephrase it.

22 MR. MALONEY: I will.

23 Q. (BY MR. MALONEY) There were transfers on the  
24 23rd, you say before you were engaged in this, by way of  
25 which the original borrowers -- and we will just talk

0188

1 about, you know, the loans from my client -- original  
2 borrowers sell their real property to FRE Real Estate.  
3 And part of the price, as set out in a written  
4 agreement, is they assume the mortgage debt, they assume

Morgan, Richard 01-27-11.txt

5 the trade debt, and then they issue a note for the  
6 balance. Those were executed on December 23rd, at least  
7 the five I have seen.

8 A. Right.

9 Q. Nobody else really knows about it until they  
10 are recorded on January 4th.

11 MR. BUNCHER: Well, I object to that as  
12 a -- I don't agree with that. But okay.

13 Q. (BY MR. MALONEY) Well, they were recorded  
14 January 4th. Do you know, were there any transactions  
15 of a similar nature executed around December 23rd that  
16 were never -- whereas a deed was never recorded?

17 A. I don't know.

18 Q. So you don't know of any additional  
19 transactions --

20 A. That were never recorded?

21 Q. Correct.

22 A. No.

23 MR. BUNCHER: Are you talking about  
24 transactions beyond the transfers that are listed here  
25 on Exhibit 168? Or are you suggesting that some of

0189 these transfers themselves were not recorded?

1 MR. MALONEY: No, not at all. There  
2 could have been a change of circumstances where other  
3 loans reached some other arrangement and did not -- were  
4 not part of a bankruptcy and, therefore, never recorded.

5 A. I would have no knowledge of that.

6 Q. (BY MR. MALONEY) Other than taxes, as with  
7 the Armed Forces Bank property, are there other carrying  
8 costs?

9 A. There will be come spring. There will be  
10 mowing costs and trimming costs and so forth. And  
11 that's -- we prepared budgets for the first three  
12 months. And then the next four budgets will show -- and  
13 I'm not only going to prepare it, I have got to show how  
14 I'm going to pay for it.

15 Q. Did you prepare budgets for these properties?

16 A. We didn't prepare budgets for the land because  
17 there's no expense.

18 Q. Right. But that will change?

19 A. Yeah, it will change come growing season.

20 Q. Is there any rule of thumb of what it costs to  
21 maintain this property by acre? Or how do you estimate?

22 A. That's a good question, depending on whether  
23 you are using a Snapper or a tractor.

24 Q. Yeah. So? You can tell what the taxes are  
0190 going to be.

1 A. Quite candidly, I don't know what it costs by  
2 acre to mow right now. I don't know that. But I can  
3 find out. That's not a problem.

4 Q. The taxes can accrue and whatever happens to  
5 them is whatever happens to taxes. You think they can  
6 be financed for five years. I'm not sure about that.  
7 What about getting stuff mowed?

8 A. That's what I'm saying, the care of the  
9 property, the mowing is a cost that I'm going to have to  
10 come up with the money to pay for outside of the secured  
11 collateral of the income producing property.

12 Q. I think that's all that I want to ask you.  
13 Thank you.

14 EXAMINATION

15 Page 79

HC 00925

Morgan, Richard 01-27-11.txt

16 BY MS. HARTWICK:

17 Q. Good afternoon, Mr. Morgan.

18 A. Yes, ma'am.

19 Q. My name is Jo Hartwick. I'm with Stutzman,  
20 Bromberg, Esserman & Plifka.

21 A. Yes, ma'am.

22 Q. And I represent Petra.

23 A. Petra. Okay.

24 Q. Sir, if I understood you correctly earlier  
25 today, you testified that when you were looking at the

0191

1 chart, for lack of a better word, that showed the  
2 properties and the values and the like, that the book  
3 value on the Amoco Building was low due to Katrina  
4 damage. Did I understand that correctly?

5 A. Yes.

6 Q. What do you consider or define book value --

7 A. Book value --

8 Q. -- to mean?

9 A. -- is the number that -- which is not on their  
10 chart, but was represented to me was what it was on the  
11 books of the seller, what the actual carrying cost was  
12 for the seller.

13 Q. And based on your lengthy experience in real  
14 estate, do you know what all goes into determining the  
15 carrying costs that's normally recorded on the seller's  
16 books?

17 A. Sure. It is the -- it is the purchase price,  
18 plus any capital expenditures put into it, less  
19 depreciation. And in most cases also, reduced by the  
20 amount of cash that the property has generated.

21 Q. You testified just a few minutes ago, sir,  
22 that it is your goal to sell the Amoco Building just as  
23 it is with several of the other buildings?

24 A. Yes.

25 Q. And that you -- and that you have -- and I

0192

1 don't want to put words in your mouth. I may have just  
2 done some shorthand of my own -- something in the works  
3 in the neighborhood of 14,000 to 16,000 --

4 A. Right.

5 Q. -- square feet. What's the status of that  
6 effort? Where are you?

7 A. I have to bring that up to date. One of the  
8 bigger tenants was wanting 9,000 square feet. And I  
9 don't remember who the other one was. But both of them  
10 were rather imminent with very little tenant finish. I  
11 haven't followed up on those two. That was my interview  
12 in between the 23rd and the 4th just to get a feel of  
13 the thing.

14 Q. Sir, are you aware that there is a tenant  
15 currently in the Amoco Building that I believe is  
16 related to the debtor that has 19,468 square feet of  
17 space, I'm informed, and that pays no rent?

18 A. I don't think that's the case. Certainly not  
19 on my rent rolls.

20 Q. Well, if you would like to check, I know my  
21 client would be delighted if they would start paying.  
22 It is Continental Baronne, I'm told, is the name of  
23 the --

24 A. It is not on my rent roll and not included in  
25 my analysis.

0193



Morgan, Richard 01-27-11.txt

1 Q. But it may be in the building?  
2 A. I don't know. It is not on my rent roll or on  
3 my analysis.  
4 Q. It would just seem if we are all trying to  
5 maximize the amount of money that's coming in --  
6 A. Yeah, I understand.  
7 Q. -- it would be worth having them start paying.  
8 And are you aware, sir, of any appraisal  
9 that's been done on the Amoco Building?  
10 A. Not by us, no.  
11 Q. You said, sir, that the properties -- like I  
12 said, as I understood your testimony, several of the  
13 properties are income producing properties, it is your  
14 goal to sell them, but some of them need a little more  
15 work. And I understood the Amoco Building is one of  
16 those that needs a little more work?  
17 A. Not as much as the others; but, yeah, it does.  
18 Q. What work does it need?  
19 A. When I say work, I'm talking about to raise it  
20 up to -- what I was trying to explain a few minutes ago  
21 is that there's -- when you are a buyer, there are --  
22 there's a level of risk that you put to the vacant  
23 space. And the level of risk you put to the vacant  
24 space is sort of how the property is already competing  
25 in the market.

0194

1 So if this market -- if I get it to 88  
2 percent, which is what this market is, if I get it to 88  
3 percent, then a buyer might attribute more value to the  
4 other because it is all upside. It is upside less the  
5 capital he has to put to it. But he has a decent return  
6 on his cash going in and -- you know, in a 7 percent  
7 range, cash going in. So that makes it a much more  
8 feasible plan for someone to do.

9 If you have got the cash flow, it  
10 satisfies the need for the requirement. Everything is  
11 upside at that point.

12 Q. And you mentioned earlier that you had seen a  
13 newspaper article about the kind of good news for the  
14 Dallas market?

15 A. Yes, uh-huh.

16 Q. Do you have your finger on the pulse of New  
17 Orleans?

18 A. I do have the market report. I went through  
19 it. But I did not spend a lot of time on it. It is  
20 quite obvious that nothing was going to be built for a  
21 long time in New Orleans, I don't think. The only  
22 building that is comparative, and I know that it is  
23 being worked, was some kind of deal where the Saints  
24 buyer bought a building and gutted it and is leasing it  
25 to some of the, you know, affiliated Government

0195

1 entities. I don't know the total details of that.

2 Other than that, I don't foresee any  
3 building in the New Orleans market. So whatever is  
4 there is going to be prime for whatever happens.

5 Q. Mr. Morgan, when did you become vice president  
6 of ABCLD Properties, LLC?

7 A. That would have had to have come at the same  
8 time. I don't remember all of those transactions.

9 Q. Did you make the decision in that capacity  
10 that the debtor -- that the -- I think -- I'm not sure  
11 if it was a sole independent director, but I believe it

Page 81

Morgan, Richard 01-27-11.txt  
12 was -- that the independent director of the debtor  
13 should be terminated; that their service should be  
14 terminated?  
15 A. First of all, I'm going to have to -- I'm not  
16 for sure I am the vice president. If that's of record,  
17 it is. Okay. I will do ABCD, whatever it is. I'm not  
18 sure I am.  
19 Now to your second question.  
20 Q. Okay. Let me help refresh your recollection.  
21 MS. HARTWICK: Let's mark this Wells  
22 Fargo whatever the next number is.  
23 THE REPORTER: 175.  
24 (Exhibit 175 marked.)  
25 Q. (BY MS. HARTWICK) Would you look at what's

0196  
1 been designated as Wells Fargo 175. That appears, sir,  
2 to be a letter from you to a Ms. Lisa Dedonato --  
3 A. Dedonato, yes.  
4 Q. -- terminating her service as sole  
5 shareholder -- or her company's service, it may well be,  
6 Corporate Staffing Team 1 -- terminating her services as  
7 sole shareholder of the debtor.  
8 A. Uh-huh.  
9 Q. Is that correct?  
10 A. Uh-huh.  
11 Q. Do you recall signing this letter, sir?  
12 A. I do recall signing the letter.  
13 Q. Did you make the decision to terminate the  
14 independent director?  
15 A. I can't remember whether it was Mr. Lewis  
16 or -- I don't remember. But I was advised that it  
17 needed to be done as far as the filing.  
18 Q. Okay.

19 MS. HARTWICK: I will reserve the right  
20 to come back with just a very few questions if I see  
21 that I missed something when I look at my notes. But I  
22 will pass the witness.

EXAMINATION

23  
24 BY MR. KINVIG:  
25 Q. Afternoon, Mr. Morgan. My name is Cameron

0197  
1 Kinvig. I'm with the firm Hunton & Williams. And I  
2 represent American Bank of Commerce.  
3 A. Okay.  
4 Q. From here on out, just because it is sort of a  
5 wordy name, if I refer to American Bank of Commerce as  
6 ABC, you would know what I mean, correct?  
7 A. Unless you put LD behind it.  
8 Q. Hopefully, not. We will just refer to my  
9 client as ABC from here on out in the questioning and in  
10 the transcript.

11 Just a few questions for you. And I  
12 think we have touched a little bit on this, but maybe  
13 not to the full extent. If we look to, I think, what  
14 was previously marked as Wells Fargo Exhibit 168, which  
15 is what your attorney provided all of us.

16 A. This chart?  
17 Q. Yeah, last night. And we look in the column  
18 that says sales price specifically. How did the debtor,  
19 or whoever reached those values, how were those values  
20 reached? And as a follow-up question, who were the  
21 entities or who was the individual that assigned those  
22 values?

Morgan, Richard 01-27-11.txt

23 A. In most cases -- I can't give a general  
24 specific without looking at the other chart. In most  
25 cases, it was a representation of the difference between  
0198 the debt and the -- combination of debt and the book  
1 value.

2  
3 So let's take specifically one of your  
4 properties. The Thornwood properties are -- basically  
5 it is a difference -- you see that your seller  
6 financing, you only have \$2971 of debt against that. So  
7 the mortgage -- the second -- not secured note, but the  
8 promissory note is 1.667 million. That represents the  
9 fact that they have it on the books for 1.670 million.

10 Q. And when you say promissory note, you mean to  
11 Thornwood itself or the entity that used to be called  
12 Thornwood?

13 A. Yes.

14 Q. I guess it is still called Thornwood after the  
15 sale.

16 And similarly on the Bridgewood Ranch  
17 Apartments, then you look at it and you say, well, the  
18 debt that was outstanding is \$5.188 million. We believe  
19 the book value to be, you know, 7.15 million.

20 A. In that case I had a little bit stronger deal  
21 because I had the financial statements. I had the  
22 budget. And I don't remember the cap rate. But it was  
23 a very attractive cap rate, save and except the other  
24 cross-collateral you had.

25 Q. Okay. So for the Bridgewood Ranch Apartments,  
0199 you would say that the sales price on Exhibit 168 is  
1 more of a value based on a cap rate based on the number  
2 of tenants and things?

3 A. No, I would not say that. I'm saying it still  
4 should be a representation of what it was on the books  
5 for. My value would be higher than what we paid for it.

6 Q. Okay. What do you believe -- well, scratch  
7 that.

8  
9 Going to something that you actually just  
10 touched on really quickly on the Thornwood Properties,  
11 specifically the debt assumed by the buyer, you  
12 mentioned it is \$2971. How was that number reached?

13 A. I'm assuming, just on what I have seen so far,  
14 and I will have to go back, it may be a Propel debt. I  
15 don't know what it is quite candidly.

16 Q. Are you aware that ABC has a \$4.3 million lien  
17 against those properties lumped together?

18 MR. BUNCHER: You mean  
19 cross-collateralized or --

20 MR. KINVIG: No.

21 Q. (BY MR. KINVIG) And just to be clear, ABC  
22 actually has two loans. ABC has one loan for a little  
23 over \$4.3 million, almost \$4.4 million. And that is  
24 secured by the Thornwood Property -- the Thornwood  
25 Properties, the Limestone Canyon II, the Temple land,

0200 and the Teleport building.

1 A. The \$4.3 million.

2 Q. Yeah. And it is also collateralized by  
3 another property that I do not believe is in the  
4 debtor's estate right now. It is a Dallas property  
5 that --

6 A. Copper Ridge.  
7

Morgan, Richard 01-27-11.txt

8 Q. Well, it is sort of a derelict building that  
9 actually should be -- or will be torn down.  
10 A. Yeah, it has got to be torn down.  
11 Q. And then it is also collateralized by a second  
12 lien in the Bridgewood Branch Apartments?  
13 A. That's correct. And I believe it also has the  
14 stock --  
15 Q. And it also has the stock.  
16 A. -- and a receivable from one of these entities  
17 that actually owned Copper Ridge.  
18 Q. Yeah, yeah. Separate and apart from that, ABC  
19 is also owed a little over \$5 million. And the only  
20 collateral, that at least I'm aware of, that  
21 collateralizes that particular loan is a first lien on  
22 the Bridgewood Ranch Apartments.  
23 A. May be true. My representation to me was  
24 that -- was that the two loans were  
25 cross-collateralized. And the filings that have been

0201

1 made -- and I discovered that I don't know exactly what  
2 day, but we've got to redo our filings because that 4.3  
3 million was not done -- was not listed. And it wasn't  
4 because when the transfer was done it was done in a --  
5 you see the notes on the bottom, sort of in a convoluted  
6 fashion, you have got to get this and this and this. We  
7 didn't talk about the debt that went with it. So we  
8 have to refile that.

9 Q. So it is your testimony then that that will be  
10 corrected on --

11 A. Exactly.

12 MR. BUNCHER: I assume it will be on the  
13 schedules that are going to get filed.

14 MR. KINVIG: Right. But for purposes  
15 of -- if the schedules aren't -- I can't remember when  
16 they are due. But if it is --

17 MR. BUNCHER: Tomorrow.

18 MR. KINVIG: Oh, well, then, there you  
19 go. It will be before the hearing.

20 A. And, quite candidly, I don't have any  
21 information, if you can help with that aspect, as to  
22 whether or not Bridgewood is a stand-alone first lien  
23 asset not encumbered by the others.

24 Q. (BY MR. KINVIG) Okay. I believe that we  
25 talked about what assets FRE had before all of these

0202

1 December 23rd transfers were made. But just so I can  
2 clarify -- and correct me if I'm wrong -- the only asset  
3 FRE had pre-December 23rd, to your knowledge, was the  
4 Fenton Centre property?

5 A. Fenton Centre and two properties that were  
6 cross-collateralized or additional collateral for the  
7 loan.

8 Q. Oh, okay. To your knowledge, does the  
9 debtor -- you mentioned the Transcontinental stock that  
10 is collateral for one of my client's loans. Was that  
11 also transferred into the debtor or was that not  
12 transferred?

13 A. Yes, it was.

14 Q. It was. And when was that transfer made?

15 A. The same day.

16 Q. On December 23rd?

17 A. Uh-huh.

18 MR. KINVIG: Okay. Just as a request for

Morgan, Richard 01-27-11.txt

19 production, if I could get any information related to  
20 that transfer.

21 MR. BUNCHER: I actually have asked Mr.  
22 Roberts to communicate with you and some other firm that  
23 sent a notice of foreclosure indicating they were going  
24 to foreclose on that stock. And so Mr. Roberts is  
25 supposed to be getting the documentation to you guys on

0203  
1 that.

2 MR. KINVIG: Yeah, that would be great.  
3 Because, to my knowledge, up until this line of  
4 questioning, I wasn't even aware that it had been  
5 transferred into the debtor. So if we could work out  
6 some dialogue on that, that would be great.

7 INFORMATION REQUESTED:

8 Q. (BY MR. KINVIG) You mentioned using cash from  
9 the Bridgewood Apartments previously to cover a lot of  
10 the expenses on some of the other properties, including  
11 this Irving property, this Teleport property. And you  
12 mentioned that they are sort of cross-collateralized,  
13 right?

14 A. That was my understanding.

15 Q. Okay. Have you -- have you viewed any  
16 cross-collateralization agreement?

17 A. No. I was basically -- that may have been a  
18 presumption, but that was the way I understood it.

19 Q. So your testimony, then, is you are not 100  
20 percent clear whether there is a cross-collateralization  
21 agreement between the one loan, let's call it the \$5  
22 million loan that has the first lien on Bridgewood, and  
23 the \$4.3 million loan that has the second lien on  
24 Bridgewood, correct?

25 A. Right -- well, that is sort of a

0204  
1 cross-collateralization, is it not?

2 Q. Well, I mean, if there is a  
3 cross-collateralization agreement. But they are --

4 A. The fact that you have the second -- you have  
5 got a second mortgage on the other loan, that is  
6 effectively a cross-collateralization, is it not?

7 Q. Not necessarily. Because I would say that --  
8 I mean, and we can get into an argument about it. But I  
9 would say that the cash flow -- the majority of the cash  
10 flow that comes in from Bridgewood belongs towards going  
11 to pay down the first lien.

12 And so I guess what I'm getting at is, if  
13 it became clear that there was no  
14 cross-collateralization agreement -- and you know how  
15 banks work where they may have different loan  
16 participants for different loans. So just because a  
17 bank makes two loans, it doesn't mean that you can rob  
18 Peter to pay Paul.

19 If it became clear that there was no  
20 cross-collateralization agreement between the one loan,  
21 the \$5 million loan and the other loan, the \$4.3 or \$4.4  
22 million loan, would it still be your plan to use cash  
23 just in toto from Bridgewood to pay some of these  
24 expenses, like for Teleport?

25 A. That's an interesting question. I don't know

0205  
1 the answer. Is a second mortgage on parcel B  
2 cross-collateralizing parcel A? I don't know. You are  
3 asking a question I don't know the answer to.

Morgan, Richard 01-27-11.txt

4 The intent was that -- as far as ABC on a  
5 global standpoint, none of the cash or the collaterals  
6 that go to that loan would ever be used for anything  
7 other than ABC's collateral in toto.

8 Q. So really what I think I heard you just say  
9 is, the only cash you want to use to support any of  
10 these raw pieces of land are cash that would be  
11 attributable from another property, an income producing  
12 property, but the cash that is attributable from that  
13 property only to that loan?

14 A. Exactly.

15 Q. So in ABC's situation, if it was shown that  
16 all the cash attributable -- that came into net cash  
17 from Bridgewood was attributable to the first loan, the  
18 \$5 million loan, and none was attributable to the second  
19 loan, the \$4.3 or \$4.4 million loan, then you wouldn't  
20 use the loan -- or the cash attributable from the first  
21 loan to pay the second loan?

22 MR. BUNCHER: Well --

23 A. You are really getting into --

24 MR. BUNCHER: Hold on. I think your  
25 whole -- that line of questioning -- that question gets

0206

1 into a legal conclusion. Because we may, in fact, take  
2 the position contrary to what you are saying. You may  
3 take the position it is not cross-collateralized and,  
4 therefore, we shouldn't use Bridgewood cash to support  
5 Teleport's expenses. We may disagree with your legal  
6 analysis and argue --

7 MR. KINVIG: I understand that.

8 MR. BUNCHER: -- to the Judge that we  
9 should be allowed to do that. And then the Judge will  
10 just decide on that. Our intention would be to present  
11 that issue to the Judge on a final cash collateral  
12 hearing.

13 MR. KINVIG: Okay.

14 MR. BUNCHER: Because under the current  
15 interim order, we expressed --

16 MR. KINVIG: That's not done.

17 MR. BUNCHER: -- indicated to the Judge  
18 we would only use cash on property A to pay property A's  
19 expenses. We didn't get into this whole  
20 cross-collateralization thing. And so for right now, we  
21 are not -- we are not going to do that.

22 MR. KINVIG: Okay.

23 Q. (BY MR. KINVIG) Staying on the Bridgewood  
24 property -- I call it the Kaufman property. So if I do  
25 slip up sometimes and call it the Kaufman property, I'm

0207

1 not talking about the raw land. I'm talking about the  
2 apartments.

3 A. I understand.

4 Q. Going back to Exhibit 168 -- or Wells Fargo  
5 168, that chart, when we look at the debt assumed by  
6 buyer and it is listed at 5.188 million -- or  
7 5.188070 --

8 A. Right.

9 Q. -- where exactly did that number come from?

10 A. That should have been the -- it was at least a  
11 record of what was owed as far as the company books was  
12 concerned.

13 Q. Okay.

14 MR. KINVIG: And I guess I can talk with

Morgan, Richard 01-27-11.txt

15 you, Doug. I think that just doesn't show the second  
16 lien on it, which I believe is around \$400,000 or so.  
17 But we can chat afterwards about that.

18 MR. BUNCHER: The second lien? You said  
19 there was a \$4.4 million loan and \$5 million loan.

20 MR. KINVIG: I believe that the second  
21 lien is capped at \$400,000 or something like that. I  
22 could be wrong. But, anyway, just wanted to clarify.

23 MR. BUNCHER: Okay.

24 A. May I ask something?

25 Q. (BY MR. KINVIG) Sure.

0208

1 A. Is that second lien, then, a first lien on the  
2 other properties?

3 Q. Yeah, from my understanding, it is a first  
4 lien on the Thornwood Properties and a first lien on the  
5 stock and I guess on this -- on this receivable.

6 That does bring up a good question. Was  
7 the receivable also transferred into the debtor, then,  
8 from whatever entity --

9 A. Yes.

10 Q. -- held that?

11 A. Yes.

12 Q. Was that a Thornwood receivable?

13 A. Pardon?

14 Q. What entity generated the receivable that was  
15 then transferred --

16 A. It is on the back side of that schedule listed  
17 there.

18 Q. Oh, okay. Going to the -- kind of the  
19 financing aspect. You briefly talked about maybe some  
20 future attempt to get financing. Have you talked to any  
21 entity about getting DIP financing for --

22 A. Not yet.

23 Q. -- any of the properties?

24 A. Because each case is separate as far as the  
25 way I would have to approach it. I don't need it -- I

0209

1 don't see any need, for example, for DIP financing on  
2 your particular project, if, in fact, all cash goes to  
3 pay. If it doesn't, then there's an issue of the  
4 Teleport cost, which it does cost something to keep the  
5 insurance going, keep the -- not the lights on, but just  
6 basic maintenance. So that's an issue we will have to  
7 address once we decide about how the assets are going.

8 Q. Okay. When did FRE become aware that there  
9 were foreclosures or potential foreclosures that were  
10 going to occur on the property?

11 A. I can't speak to FRE. I mentioned to you that  
12 I wasn't aware at the time when I signed on to take this  
13 job of any particular ones that were happening.  
14 Obviously, since then, I have become aware of some that  
15 were attempted to do, some were trying to do, this kind  
16 of stuff.

17 Q. So between -- and you previously testified you  
18 are kind of it at FRE?

19 A. Right.

20 Q. You are sort of the employee, right?

21 A. Right.

22 Q. So between December 23rd when you started your  
23 job, officially at least, and when the foreclosures  
24 happened on January 4th, were you aware that any  
25 foreclosures were going to occur?

Morgan, Richard 01-27-11.txt

0210

1 A. No.  
2 MR. BUNCHER: Object to form that  
3 foreclosures, quote, happened.  
4 Q. (BY MR. KINVIG) Assuming that foreclosures  
5 happened, were you aware between those dates?  
6 A. I wasn't aware of any foreclosures that were  
7 going to happen on January 4th.  
8 Q. And you only then learned that any alleged  
9 foreclosures happened after January 4th or on --  
10 A. On or after.  
11 Q. Okay. And did you see any of the notices that  
12 were sent to FRE about potential foreclosures?  
13 MR. BUNCHER: Objection to form because I  
14 don't know that any notice was sent to FRE.  
15 Q. (BY MR. KINVIG) To the extent any notice was  
16 sent to FRE, did you see any notice?  
17 A. I haven't seen any.  
18 Q. Okay. Speaking about the guarantors -- and  
19 I'm sure some of the other collateral had guarantors on  
20 it. I know my client's collateral did as well.  
21 Are any of those guarantors for either  
22 the Thornwood Properties or the TCI Hunters Glen  
23 property, have they come to debtor and said, we would  
24 like to contribute to the debtor's bankruptcy?  
25 A. I don't know specifically who those are.

0211

1 Q. Okay. Have any parties come forward and said,  
2 you know, we may be interested in investing money or  
3 providing some sort of cash financing, whatnot?  
4 A. Not yet.  
5 Q. Okay. We talked about the debtor's sort of  
6 future plans for reorganizing a lot of collateral. And  
7 you said, you know, it is different depending on the  
8 various pieces of property. What about the Limestone  
9 Canyon II property, the Austin raw land?  
10 A. Your particular collateral, I'm putting a  
11 priority on, in particular, the Limestone. I think  
12 that's a hot property. Temple is going to be a little  
13 bit less. But as far as being ready to sell -- you  
14 know, when you sell a property, if you are going to  
15 build apartments and it is already zoned, it has already  
16 got utilities, it has already got all the stuff, it  
17 makes it easy, that property does. So those are going  
18 to be my first two priorities.  
19 Teleport could probably be sold to a  
20 user/occupier. And that's going to be what I try to do.  
21 I have got a 6,000 square foot building, very specialty  
22 use. If I find somebody today, for example, that was  
23 like a -- wanted to be like a server operation where  
24 they could have a server in there and then some service  
25 personnel, it would be perfect for it because it has

0212

1 already got the raised floor and all that stuff in it.  
2 So those extra collaterals, if you will,  
3 will be the first thing to go.  
4 Q. Okay.  
5 A. In my mind. I can't put a time frame on it.  
6 But that's where I think we have some real expectations  
7 of getting it sold.  
8 Q. Okay. Do you know what the monthly cash flow  
9 is for Bridgewood, for the apartments?  
10 A. I do not right off my hand. It is in our cash



Morgan, Richard 01-27-11.txt

11 collateral --  
12 Q. Yeah. If I represented to you that the net  
13 cash flow after you take out all of the operating  
14 expenses paid to the management company and things was  
15 between \$45- and \$50,000 a month, would you roughly  
16 agree with that?  
17 A. I would rather go to the cash collateral, if  
18 you don't mind.  
19 Q. Okay. That would be fine.  
20 A. Whatever it says. Because I did pay some  
21 attention to that and tied it to the budget.  
22 Q. I believe it is the very last page in that.  
23 MR. BUNCHER: what are we talking about?  
24 MR. KINVIG: The Bridgewood Ranch  
25 Apartments.

0213  
1 Q. (BY MR. KINVIG) It is the very last page of  
2 that.  
3 A. Yeah.  
4 Q. So what's sort of the low number and what's  
5 the high number on that?  
6 A. 45 low, 49 high.  
7 Q. And when you say 45 --  
8 A. Average about 47,000.  
9 Q. 47,000?  
10 A. Yeah.  
11 Q. Okay. And do you know what the debt service  
12 is pre-petition on that for the first lien?  
13 A. I don't know exactly.  
14 Q. Okay. Do you know that -- do you know whether  
15 or not the difference between that 45- to 49,000 and the  
16 debt service, if there's any net cash flow on the  
17 property per month?  
18 A. Well, without knowing what the debt service  
19 is, I couldn't tell you.  
20 Q. Okay. So you don't know if the property was  
21 cash flow positive or cash flow negative pre-bankruptcy?  
22 A. I can't testify to that. I would be glad to  
23 go back and look at my budgets and so forth. I can't  
24 say just off the hand.  
25 Q. Now, you mentioned before that you had some

0214  
1 interest in taking the land that's adjacent to the  
2 Bridgewood Ranch Apartments and selling that, correct?  
3 A. Yes.  
4 Q. Okay. And you previously mentioned -- and  
5 correct me if I'm wrong -- that you said you would sell  
6 that and use some of that cash to pay down ABC's loan?  
7 A. Who -- no. It would have to be paid down  
8 whoever the debtor is. I don't remember who holds that  
9 as collateral, but it is not you.  
10 Q. Okay. I just wanted to clarify because I know  
11 we do not hold that as collateral.  
12 A. Yeah.  
13 Q. So if that's the case then, what is your plan  
14 for the Bridgewood Ranch Apartments? You previously  
15 said there's not a lot of improvement that can be done  
16 on that property.  
17 A. No, I think that the -- there is -- in my  
18 mind, there's a couple of things that can be done which  
19 will help it. You know, it has -- it is on a road  
20 frontage but doesn't have rights. You enter it through  
21 a back way. So I'm going to encourage them to put up a

Page 89

HC 00935

Morgan, Richard 01-27-11.txt

22 good sign there saying this is Bridgewood Ranch. The  
23 first time you see that, you have got to go in past the  
24 that star that say -- sign that says Five Star and to  
25 get past that and turn left and then you see Bridgewood

0215  
1 Ranch. I think it ought to be very, very prominent.

2 But bear in mind, it is in a secondary  
3 market. It is 90 percent occupied. It is not a bad  
4 situation right now.

5 Q. So what do you plan to do with it in this  
6 bankruptcy?

7 A. Oh, eventually we will sell it. I have got to  
8 get untangled -- I have got to get all this  
9 cross-collateral stuff untangled and see how that comes  
10 out. If, in fact, we have got to sell it for your loan  
11 plus 400,000, then that's the price we will see if we  
12 can attain.

13 Q. Okay. And you had previously testified you  
14 weren't aware of any pending foreclosures, correct?

15 A. Uh-huh.

16 Q. Did you ever provide -- between when you  
17 started your job on December 23rd and the bankruptcy  
18 petition date, did you ever provide any creditor with  
19 kind of a heads-up, any sort of notice saying, I don't  
20 know if you are going to foreclose, but we are planning  
21 to file bankruptcy on January 4th?

22 MR. BUNCHER: You are asking if he  
23 personally did?

24 MR. KINVIG: For this question, yes.

25 A. Did I personally?

0216  
1 Q. (BY MR. KINVIG) Yes.

2 A. No.

3 Q. Did you make any lender aware that FRE was  
4 contemplating bankruptcy?

5 MR. BUNCHER: Again, you are asking you  
6 as him personally?

7 Q. (BY MR. KINVIG) Did you personally make any  
8 lender aware that FRE was planning a bankruptcy filing  
9 on January 4th?

10 A. No.

11 Q. No. Are you aware of whether FRE made any  
12 lender aware that they were contemplating bankruptcy?

13 A. I'm not.

14 Q. Okay. And sort of similar to that, did you  
15 personally tell any or communicate to any lender or any  
16 other party in interest, for that matter, the fact that  
17 all of these properties have been sold into FRE -- or  
18 allegedly sold into FRE on December 23rd?

19 A. No.

20 Q. And are you aware of any other representative  
21 of FRE giving any party of interest a similar notice?

22 MR. BUNCHER: And -- well --

23 A. I can't speak to what any other party might  
24 have done.

25 Q. (BY MR. KINVIG) Okay. But you are the

0217  
1 corporate representative of FRE?

2 A. You asked, was I aware. No, I'm not aware.  
3 It doesn't mean it hasn't happened. I'm just not aware.

4 MR. KINVIG: As everyone else said, I  
5 reserve the right to ask a couple of follow-up  
6 questions. But I believe that I'm done here.

Morgan, Richard 01-27-11.txt

MR. WEITMAN: If I may just ask a few follow-up questions.

MR. STROMBERG: And just for the record, he's coming in ahead of me. I still have some questions of my own. Okay.

FURTHER EXAMINATION

BY MR. WEITMAN:

Q. Mr. Morgan, you are also vice president of ABCLD Properties, correct?

A. That was sort of news to me. I'm not sure. Well, not news to me. I signed some letters I saw a moment ago, I think, ABC, ABCLD, whatever it was.

Q. Did you earlier sign a document accepting that position?

A. I don't recall that. I don't recall doing it. I do see where I signed a letter a few moments ago.

Q. In that capacity?

A. Yeah.

Q. Are there other things in relation to your

positions as officers -- as an officer in the various entities that you haven't checked out? I mean, could you be a director and officer of any other affiliated entities?

A. I'm almost certain I'm not of any affiliated entities.

Q. But the document by which you became an officer of ABCLD Properties, was that something that Mr. LaJone handed to you to sign?

A. I do not recall. I don't recall.

Q. I believe earlier you said that at this December 23 meeting with Mr. Moos and Mr. Akin, they spoke of transfers that had occurred already and then asked you if you would step in as VP of FRE and act as chief restructuring officer, correct?

A. Right. Right.

Q. Were you aware then that all of those transfers would be made or had been made and that FRE would be going into bankruptcy with all of those different assets?

A. I was aware very shortly after that, that was the plan. On the 23 -- I'm using 23, 24 -- it had to be the 23rd, the conversation was relative to, this is a list of properties and everything is going into here and there may be a possibility of a bankruptcy filing. That

was on the 23rd.

Q. Did you sign documents on the 23rd?

A. Only to the standpoint of accepting whatever -- I don't recall what I signed on the 23rd, to be candid with you. I think I -- all I remember seeing was some -- where I had been elected vice president of the FRE. I don't remember all the documents.

Q. But you didn't sign any documents -- transfer documents?

A. No.

Q. I think you said that was done already, correct?

A. It was done by separate parties.

Q. Right. Let me hand you what I would ask to have marked as Wells Fargo 176.

(Exhibit 176 marked.)

Q. (BY MR. WEITMAN) These are two emails that

Morgan, Richard 01-27-11.txt

18 were sent. One by you on January 3rd at 11:55 in the  
19 morning and the other one by Mr. Daugherty of Prime  
20 Income.

21 A. Uh-huh.

22 Q. Let me read the first sentence. When I  
23 executed documents last week, I was of the impression  
24 that the Amoco Building and the Fenton building were  
25 going into bankruptcy. Late Thursday afternoon, I was

0220 1 advised it is much larger and, to my knowledge, I have  
2 not signed on the major entity that is to be filing  
3 [sic].

4 what does that mean?

5 A. I was not aware that the whole thing was  
6 rolling under the FRE scenario. I wasn't aware of the  
7 total scope of it at the time I was presented that. At  
8 the time I had the conversation, which I don't know  
9 exactly when it was, that was last week, that would have  
10 been sometime around Christmastime.

11 Q. But wasn't all this on the spreadsheet that  
12 you got on December 23rd showing all the transfers in?

13 A. Well, the last week is a -- is a generic term.  
14 Obviously, I knew about it at the time I saw the  
15 spreadsheet. This was in a concept stage where I was  
16 just basically advised that there was a transfer of  
17 properties going on, they wanted me to be the vice  
18 president. That was it.

19 Q. Of the debtor entity that would go into  
20 bankruptcy?

21 A. Of the debtor entity.

22 Q. And you knew then it was going into  
23 bankruptcy?

24 A. Pardon?

25 Q. And you knew then --

0221 1 A. I did not know then until I got this schedule  
2 and then talked a little bit further with Danny Moos.  
3 The person who gave me a whisper that something was  
4 going on was Gene Bertcher, who is the chief financial  
5 officer of Prime, who is a good friend. And he just  
6 mentioned it was coming down and they wanted me to  
7 handle it. And that's just about all I knew at that  
8 point in time.

9 Q. You also say, please provide me copies of all  
10 the documents I executed this past week. I will need  
11 full disclosure on any future documents that need to be  
12 executed.

13 which documents did you execute this past  
14 week?

15 A. I don't know. It was a bunch of documents I  
16 executed that particular week. I don't know what they  
17 were. I just hadn't -- at that point I didn't have a  
18 file of everything I executed. And I was asking to get  
19 my file straight.

20 Q. So you were an officer of FRE at that point,  
21 correct?

22 A. Yes.

23 Q. And you were an officer of ABCLD Properties at  
24 that time, correct?

25 A. That I will have to verify. That one -- my  
0222 1 memory doesn't click on that one.

2 Q. If you could, I'm just trying to understand,  
Page 92

Morgan, Richard 01-27-11.txt

3 you know, what documents were executed by you at the  
4 different points in time because your earlier testimony  
5 was that the transfer documents had already been  
6 executed.

7 A. That's correct.

8 Q. And if you are made an officer, that doesn't  
9 require you to execute anything, right?

10 A. Well, I don't know what date I signed that  
11 letter, for example, that the Amoco lady just showed me.  
12 Whatever date that was, it was. I just don't remember  
13 everything I signed. Whatever I signed that day, I  
14 wanted to just get a copy for my files.

15 Q. I mean, those could have been letters that you  
16 sent causing folks to resign. Do you view that as a  
17 document executed?

18 A. You are getting very -- you are covering a  
19 wide scope.

20 Q. Would you be kind enough to place as an  
21 insert, you know, for you to go back and detail what  
22 documents you executed so we can get a better idea as to  
23 what you did versus what you kind of stepped into,  
24 please?

25 A. Okay.

0223 1 Q. Thank you.

2 INFORMATION REQUESTED:

3 MR. BUNCHER: Just as a point of  
4 clarification, do you know actually when the documents  
5 that are dated December 23rd that accomplished these  
6 transactions were actually executed by Mr. Akin and the  
7 other person that signed them?

8 THE WITNESS: No.

9 MR. STROMBERG: Doug, this is a good time  
10 to take a break. Do you want to take a break?

11 THE WITNESS: I'm fine if you guys want  
12 to keep going.

13 MR. BUNCHER: I would ask that we try not  
14 to have like two -- like three and four rounds. This is  
15 not like sudden death where he tries to score and then  
16 he gets a chance to score and so on.

17 MR. STROMBERG: That would more resemble  
18 death than sudden death.

19 EXAMINATION

20 BY MR. STROMBERG:

21 Q. Mr. Morgan, my name is Mark Stromberg. I  
22 represent State Bank of Texas.

23 A. Yes.

24 Q. Let me ask you, just following up briefly on  
25 Mr. Weitman's last question, if bankruptcy, when you

0224 1 were first consulted about this engagement as chief  
2 restructuring officer for FRE Real Estate, was a  
3 possibility, but not a certainty, what did you envision  
4 your nonbankruptcy responsibilities would be on that day  
5 before you found out about the bankruptcy?

6 A. The concept did not change. You have seen the  
7 movie The Mechanic, someone who gets it done. That's  
8 the way I'm perceived is the mechanic. So the concept  
9 doesn't change whether it was going to bankruptcy or not  
10 going to bankruptcy. My job was to find ways to improve  
11 it to make it better.

12 Q. Okay. Now, in terms of your preparation for  
13 your deposition today -- this is a long table, I've been

Page 93

HC 00939

Morgan, Richard 01-27-11.txt

14 at the other end of it, so I may have missed this. Were  
15 you asked what you did, other than talking to Mr.  
16 Buncher or your attorneys, to prepare yourself for your  
17 deposition today as the CRO of FRE?

18 A. CRO of FRE?

19 Q. I'm sorry.

20 A. CEO of FRE, right, is what you --

21 Q. Yeah. I heard you were the chief  
22 restructuring officer so --

23 A. Well, I'm actually vice president.

24 Q. Let me rephrase the question so we are clear.

25 MR. BUNCHER: And the mechanic.

0225

1 Q. (BY MR. STROMBERG) And the mechanic. As  
2 the -- in whatever capacity you are appearing in your  
3 deposition today, what did you do to prepare yourself to  
4 testify, other than speaking to your attorneys?

5 A. Two things to prepare myself. One was I went  
6 and consulted with Henry Butler, who is a friend of some  
7 forty years and who was responsible for a great deal of  
8 putting this land together and so forth, and R.L. Lemke,  
9 who basically is the engineer and in charge of the  
10 Mercer Crossing. And both of them to talk with, not  
11 only what was -- what was the market then, I didn't care  
12 about that, what is it really worth now. And so I  
13 deduced a great -- I summarized a great deal of the  
14 properties.

15 And based on what we have either an  
16 interest in or what it is just reasonably worth, based  
17 on what I know, I came up with what I thought was a  
18 value of -- against the existing debt. I excluded the  
19 Wells Fargo properties because I was not familiar with  
20 this 2500 acres that much. I excluded that. But all of  
21 the rest that you have already, I pretty well know the  
22 properties very well. So I was able to make my own  
23 conclusions.

24 In addition to that, as I mentioned to  
25 you, I have been part of the structure of the Barnett

0226

1 play. In doing that, I had to look for drill sites.  
2 And in doing drill sites, I had to get, okay, what do  
3 you have in this thing, where can I put a drill site.  
4 And I found out, well, this is \$4 land, \$6 land, \$12  
5 land. And I had to restructure the drill sites so that  
6 I would minimize the value impact of the property.  
7 Because part of ATI's responsibility was to provide  
8 eight, nine drill sites out of this entire program.

9 Q. Can I ask you to give me a time frame on when  
10 you were doing this drill site analysis? When relative  
11 to now?

12 A. '06 to mid 2010.

13 Q. Okay. Insofar as determining the property  
14 values was concerned, your discussions were with Mr.  
15 Butler and Mr. Lemke?

16 A. Henry Butler and R.L. Lemke, yeah.

17 Q. All right. Does Mr. Butler have any sort of a  
18 title with any of the TCI entities?

19 A. No, he's with Prime Asset.

20 Q. Okay. And Prime Asset is --

21 A. Let me say this. I don't know that. I know  
22 what his job is and I know that he works for Prime  
23 Asset. I can't say whether he may or may not be an  
24 officer or anything else. I don't know that.

Morgan, Richard 01-27-11.txt

25  
0227

Q. What is his job for Prime Asset?

1

A. To handle certain portions of the land.

2

Q. Okay. And Prime Asset has a relationship with  
TCI, does it not?

3

4

A. It is an advisor to TCI.

5

Q. Is it owned by some of the same entities or  
persons that own TCI?

6

7

A. I think not. I think not. And I think  
there's some -- I believe it is owned by some type of  
trust. But I don't know the total details on that.

8

9

Q. Okay. And is that a trust for Mr. Phillips or  
his family?

10

11

A. I don't know.

12

13

Q. Okay. Who would know the answer to that  
question?

14

15

A. We could get it revealed to you. I can get  
the structure if it is important. If it is relevant to  
the case, we can get it for you.

16

17

Q. I would like to know that because I'm  
interested in finding out whether this information was  
coming from somebody who was associated in some way or  
another through Prime Asset with TCI or the --

18

19

20

21

A. Oh, absolutely, no question. I mean, he's  
been in charge of marketing those properties. So he's  
associated with it in the sense of that he -- but you  
are talking two different things.

22

23

24

25

0228

1

Q. Okay. Well, I just want to talk about  
preparation right now.

2

3

A. No, I'm getting to that. There are two  
different people you talk to. There's the Henry Butler,  
who represents -- that might talk to you about what it  
is worth and the Henry Butler who will talk to his  
friend of forty years and tell you what he thinks it is  
worth. We talked as friends.

4

5

6

7

Q. Okay. Insofar as your discussions with Mr.  
Butler were concerned, when did these take place?

8

9

10

11

A. About a week ago.

12

13

Q. And Mr. Lemke, when did those discussions take  
place?

14

15

A. The same day.

16

17

Q. About how long was this meeting with Mr.  
Butler and/or Mr. Lemke?

18

19

A. Actually, Mr. Butler was -- he would call Mr.  
Lemke in at various times when he needed. It was about  
a 2-hour session. Because I wanted to focus on -- at  
that time I was looking at, okay, what is a specific  
lender's collateral, what do you have underneath your  
collateral, and looking to see what I thought the value  
was against the loan against that collateral.

20

21

22

23

Q. What does Mr. Lemke do insofar as the TCI,  
Prime Asset entities?

24

25

0229

1

A. He is basically the supervisor or project  
manager for Mercer Crossing, which is that big  
development at the intersection of 35 and 635. If you  
look at the signs, the sign has got his name and number  
on it as the person to contact if you want to know  
something about Mercer Crossing.

2

3

4

5

6

Q. But he's not an independent broker for the  
properties?

7

8

9

A. No.

Morgan, Richard 01-27-11.txt

10 Q. He works within the TCI companies?  
11 A. Right.  
12 Q. Am I right?  
13 A. That's right.  
14 Q. Do you know what his title or titles may be?  
15 A. I do not.  
16 Q. Did you consult with anybody outside the TCI  
17 companies, again excluding your lawyers, concerning the  
18 value of these properties or regarding any other aspect  
19 of this case to prepare for your deposition?  
20 A. You are talking about two things. You are  
21 talking about the land?  
22 Q. I'm talking about what you did to prepare for  
23 your deposition today.  
24 A. No, I didn't consult with anyone, other than  
25 the announced people.  
0230  
1 Q. Okay. Thank you. There's been a lot of  
2 discussion to the exhibit to -- I believe it is 174,  
3 which is the Cash Collateral Order. And I want to have  
4 you look at that, if you wouldn't mind.  
5 A. Can you refresh me as to what your collateral  
6 is?  
7 Q. Well, we will take a look at it because I  
8 think it will become clear from this exhibit.  
9 A. Okay.  
10 Q. Take a look at the exhibit to the Cash  
11 Collateral Order that I think Mr. Buncher has put in  
12 front of you. It has the Information for the Initial  
13 Debtor Interview, and it is also attached to the Cash  
14 Collateral Order that describes the value, the debt, and  
15 the lienholder on the property.  
16 A. Okay.  
17 Q. If you will look in the middle of the very  
18 first page where it says Archon -- am I pronouncing that  
19 right?  
20 A. Archon, yeah.  
21 Q. Archon. Thank you. I will ask you to look to  
22 the far right column. Do you see the two lenders that  
23 are identified there?  
24 A. I do.  
25 Q. And one of them is State Bank of Texas. Am I  
0231  
1 right?  
2 A. Right.  
3 Q. The other is Access 1 Capital --  
4 A. Yes.  
5 Q. -- or Access 1st Capital. Is it Access 1st  
6 Capital?  
7 A. Yes.  
8 Q. I'm not terribly familiar with them, but I  
9 understand that they are a bank in Denton; is that  
10 right? Do you know?  
11 A. I don't know.  
12 Q. Okay. While we are talking about them, they  
13 are reflected here as having a debt. And the debt  
14 that's listed out beside Access 1st Capital is  
15 \$687,931.58. Do you see that?  
16 A. Uh-huh.  
17 Q. Is that a yes?  
18 A. Yes.  
19 Q. Okay. Thank you. And do you know when the  
20 Access 1st Capital loan was made?



Morgan, Richard 01-27-11.txt

21 A. I don't.  
22 Q. Do you know whether that lien is prior to or  
23 subordinate to that of State Bank of Texas?  
24 A. I do not.  
25 Q. Do you know what that money was borrowed by  
0232 the -- what is the -- Crown Point? Is that the name of  
1 that particular transferor?  
2 A. Subsequent to this filing, I am now of the  
3 impression that the Archon land, with the State Bank  
4 collateral and the Las Colinas 5.307, was Access 1st  
5 Capital collateral; and it should have been separated as  
6 to the lenders -- as to the value and the lenders. It  
7 should have been a separate issue.  
8 Q. Okay. While we are talking about that, you  
9 see in parentheses it says TIC --  
10 A. Yes.  
11 Q. -- in the description?  
12 A. Uh-huh.  
13 Q. And that relates to the 5.307 acres. Am I  
14 right?  
15 A. Right. Right.  
16 Q. Is that the property on which a parking garage  
17 is located? Do you know?  
18 A. I don't think so. I think -- you are talking  
19 a parking garage next to what? Next to what?  
20 Q. I'm not sure. I'm asking. These are the  
21 debtor's properties. I'm just learning about this case  
22 as well.  
23 A. Yeah. I don't think the 5.307 is yours. The  
24 24.139 acres, that's basically at 114 and Belt Line.  
0233  
1 Q. The -- I was given the impression by my client  
2 that they had a security interest in a tenant in common  
3 property.  
4 Have you done anything to investigate  
5 whether or not State Bank of Texas has any interest in  
6 this 5.307 acres?  
7 A. Maybe that's what it is. I don't know. I  
8 will find out.  
9 Q. Okay. And tenant in common, do you have an  
10 understanding as to what that means?  
11 A. Yes, uh-huh.  
12 Q. What does that mean to you?  
13 A. My understanding is some type of property  
14 adjacent to or something that would basically make them  
15 have to use one another's property in order to make it  
16 work.  
17 Q. Okay. Am I correct also in my understanding,  
18 Mr. Morgan, that the 24.139 acres are vacant undeveloped  
19 land at this point?  
20 A. Correct.  
21 (Mr. Weitman departs room.)  
22 Q. Am I also correct in my understanding that  
23 there is no income and no immediate prospect for income  
24 from that 24.139 acres at the present time you are aware  
25 of?  
0234  
1 A. Correct.  
2 Q. Okay. And there hasn't been any income from  
3 that property for some period of time?  
4 A. Correct.  
5 Q. And am I also correct in my understanding that

Page 97

HC 00943

Morgan, Richard 01-27-11.txt

6 when you talked about properties that are going to need  
7 some input of capital at some point in the near future  
8 because of the need just to mow the property, that this  
9 24.139 acres in Las Colinas is one of those properties  
10 that will need that?

11 A. Yes.

12 Q. Am I also correct in my understanding that  
13 there are some unpaid ad valorem taxes with respect to  
14 this property?

15 A. Another schedule, please.

16 Q. I'm not sure. I'm asking.

17 A. I don't know.

18 MR. BUNCHER: I think it is in here too.

19 MR. STROMBERG: Is that also in 174?

20 MR. BUNCHER: No. 167, which is the  
21 debt -- complete debtor interview package, Exhibit 5.

22 A. This schedule file shows 242,430.

23 Q. (BY MR. STROMBERG) Okay. Does Archon -- let  
24 me put it another way. Does FRE or did Crown Point have  
25 a separate dedicated bank account in which there was

0235 1 cash that the debtor now controls for the purposes of  
2 paying these \$242,000 in taxes?

3 A. I do not know about the past.

4 Q. Is there one right now, that --

5 A. No.

6 Q. -- you are aware of?

7 A. No.

8 Q. Now I want to ask you some questions about  
9 values. This value that's reflected for the Archon  
10 property in Exhibit 174, the \$6.7 million --

11 A. Uh-huh.

12 Q. -- is this the value that you computed for the  
13 bankruptcy case? Or is this the one that you were  
14 talking about when you had your discussions with Mr.  
15 Butler, your friend-to-friend value?

16 A. No, this is for the bankruptcy case.

17 Q. Okay. And you mentioned that your methodology  
18 for determining this value, as I understand it -- and,  
19 again, I was at the end of the table -- had to do  
20 something with the debt perceived value of comparable  
21 sales and the book value of the property. Did I more or  
22 less get that right?

23 A. No.

24 Q. Okay. Help me out.

25 A. What is filed on these filings should, in most

0236 1 part, equal -- if you go back to the other column that  
2 you haven't seen -- what it was carried on the books  
3 for. So it was on the books for 6.7. You had a certain  
4 amount of debt. And the note was carried somewhere  
5 along in there. And your land is different. It is  
6 4,695,000. If you add up on this schedule, schedule  
7 168, the combination of the seller financing and the  
8 debt assumed equals the 6.7.

9 Q. Okay. So in looking at this \$6.7 million  
10 number, you are telling us that, to the best of your  
11 understanding, this represents the book value of the  
12 property?

13 A. No. It represents what was on the books of  
14 TCI or whatever entity it was that transferred it out.  
15 That's what it was on the books for.

16 Q. Okay. How is that different than book value?

Morgan, Richard 01-27-11.txt

17 A. Same thing.  
18 Q. Okay. Now, this \$6.7 million number, are you  
19 telling the Court that you have in mind a different  
20 number for the value of this property?  
21 A. I haven't spent that much time on this  
22 particular one. I have got to go look at it. I knew  
23 the Payne-North and the Payne-South because I had  
24 already spent some time on that. But I don't know this  
25 one that well.

0237

1 There is one little piece of property  
2 that is tied up in one of the other collaterals that is  
3 actually an access piece. And it is a very small piece  
4 of land. But I have got to go over there and physically  
5 see it. I know we have some interest in it already.  
6 There's an interested party looking at it right now.

7 Q. Who is that, by the way?

8 A. I don't know. I mean, I just was told that  
9 there's somebody kicking tires right now.

10 MR. BUNCHER: Interested in the Archon  
11 land or the access piece?

12 THE WITNESS: Archon land. The access  
13 piece just has to go with the land.

14 Q. (BY MR. STROMBERG) You don't know, as you sit  
15 here today, which of the other parcels the access piece  
16 is associated with?

17 A. I think I can pinpoint it. It is a very small  
18 piece. It is called Ridgepoint -- here it is.  
19 Ridgepoint Drive, Irving, Texas. That's now -- it is  
20 only \$92,000 worth of debt. And I'm not sure who has it  
21 right now. But it is the .65 acres under page 2, about  
22 the fifth one down.

23 Q. And absent that property, there is no direct  
24 roadway access to --

25 A. I didn't say that. I'm saying this was

0238

1 represented to me by Mr. Butler as being a key part  
2 of -- the Payne-North needs to have that piece in order  
3 to make it a sellable project because it provides the  
4 right access, not necessarily the access, but the right  
5 access.

6 Q. Do you know of any other access to the 24.139  
7 acres other than the --

8 A. I haven't --

9 Q. I'm sorry. Let me --

10 A. -- had it very long --

11 Q. Let us have an agreement so that we don't have  
12 an unclear record. I definitely owe it to you to let  
13 you finish your answers, if you will do me that same  
14 courtesy. And I know it is late in the day. Will you  
15 try to --

16 A. No, that's okay. I'm not married to you, so I  
17 don't have any right to interrupt you.

18 Q. Okay. Thank you. So I'm trying to finish  
19 this question here and make sure I understand the  
20 answer.

21 On the Ridgepoint property, are you aware  
22 of any other access other than through the Ridgepoint  
23 property to the 24.139 acres?

24 A. I have seen the aerial. I do not recall  
25 specifically. I was focusing on the fact that, in

0239

1 looking at the aerial, Mr. Butler says, this piece

Morgan, Richard 01-27-11.txt

2 should go with this piece in order to provide the best  
3 access.

4 Q. I see. Do you know, traditionally, who has  
5 been paying for maintenance on the 24.139 acres?

6 A. Whatever the owner entity was.

7 Q. And if I represent to you that entity was  
8 called Crown Point, Inc., formerly known as  
9 Transcontinental Crown Point, would that be the party  
10 who you would think would be doing that?

11 A. Whoever the owner was.

12 Q. Okay. Do you know, as you sit here today, who  
13 the previous owner was?

14 A. No, not without looking at some documentation.  
15 No.

16 Q. Okay. Do you know if the property at Archon,  
17 the 24.139 acres, is actually listed by an outside  
18 broker?

19 A. Not to my knowledge.

20 Q. Did Crown Point, to your knowledge, have any  
21 other properties, other than the property listed here as  
22 Archon, prior to the transfer of the properties to  
23 Fenton Real Estate, or FRE, and before the bankruptcy?

24 A. No familiarity.

25 Q. Do you know whether or not it had any

0240 employees prior to that time?

1 A. No familiarity.

2 Q. Do you know whether or not Crown Point had any  
3 other business --

4 A. No familiarity.

5 Q. -- prior to that time.

6 Are you aware that there was a stock sale  
7 on December 27 for the stock of Crown Point to be sold  
8 to ABCLD Income? Are you familiar with that?

9 A. Tell me about it. I'm not familiar with it.

10 Q. You were referring to some documents, Mr.  
11 Morgan, in -- pursuant to which there was a sale of the  
12 Crown Point stock to an entity known as ABCLD Income  
13 that we have been talking about earlier in the  
14 deposition.

15 A. Okay.

16 Q. Are you familiar with that transaction?

17 A. I'm not familiar with any of those Income  
18 transactions.

19 Q. Okay. There is a resuscitation that in  
20 exchange for the sale of that stock there was \$1,000  
21 paid at closing. Do you know if that \$1,000 was paid  
22 and to whom?

23 A. I don't know about the deal, so I can't tell  
24 you.

0241 Q. Okay. And just to clarify, do you know  
1 whether or not there was even a closing on December  
2 27th?

3 A. I don't know about that transaction.

4 Q. Fair enough. There was also, among the  
5 documents that were produced to us, an Allonge to the  
6 promissory note between Coventry Point, Inc., and Fenton  
7 Real Estate, Inc. And I want to know if you are  
8 familiar with that document.

9 A. I'm not.

10 Q. The Allonge purports to endorse the promissory  
11 note to Transcontinental Realty Investors, Inc. Are you  
12

Morgan, Richard 01-27-11.txt

13 familiar with that?

14 A. Promissory note on what?

15 Q. On Coventry Point, the 2,004,000 -- excuse me.  
16 Looking at -- do you have 168 there in front of you?

17 A. Sure.

18 Q. Take a look at the Archon property on the  
19 first page of Exhibit 168. Are you looking at that?

20 A. I gotcha. Okay.

21 Q. And in the column that says selling financing  
22 note, 5 years at 6 percent --

23 A. Uh-huh.

24 Q. -- do you see where it says \$2,004,039?

25 A. Uh-huh.

0242

1 Q. Is that a yes?

2 A. Yes, I see.

3 Q. Okay. And are you familiar with the fact that  
4 there was an Allonge of that note which transfers or  
5 endorses the note to Transcontinental Realty Investors  
6 on December 27, 2010?

7 A. As I told you, I wasn't aware of any of those.

8 Q. Okay. I just have to ask.

9 A. Yes.

10 Q. Do you know -- and, again, you may not know  
11 the answer to this, but I need to ask you. Do you know  
12 whether or not that this transaction, which apparently  
13 divested Fenton Real Estate, Inc., of the note, was for  
14 any consideration at all, paid to Fenton Real Estate by  
15 Transcontinental Realty Investors?

16 A. If it is an obligation of Fenton Realty  
17 Investors and they got rid of it, why would it be paid  
18 for?

19 Q. Okay. Do you know what the consideration on  
20 either side of that transaction was?

21 A. No.

22 MR. BUNCHER: I'm sorry. I need to take  
23 a break because we got a call from the Court, and I need  
24 to contact the Court.

25 MR. STROMBERG: Oh. Very good.

0243

1 (Recess, 3:35 p.m. to 3:43 p.m.)

2 Q. (BY MR. STROMBERG) Did I understand  
3 correctly, Mr. Morgan, before we left off, that you  
4 don't have in mind a different appraised value for the  
5 Archon property?

6 A. That's correct.

7 Q. Okay. Do you know whether or not there  
8 exists, in either the Crown Point files or in the files  
9 that you inherited as the chief executive officer of  
10 FRE, any appraisal for that property?

11 A. Do not know. But that's one of the properties  
12 from my focus. I have not had time to focus on that  
13 before today.

14 Q. Related to that, did you actually receive  
15 files from Crown Point, Inc., or TCI Crown Point when  
16 the transfer of the property from TCI Crown Point or  
17 Crown Point took place?

18 A. No.

19 Q. Do you know whether or not there are separate  
20 files maintained in regards to Crown Point, Inc., that  
21 you still have not received from TCI?

22 A. If I understood your first question, have I  
23 received it; and the next question was, do I know where

Page 101

Morgan, Richard 01-27-11.txt

24 they are if I haven't received it, I don't understand --  
25 Q. No. Do you know if there exists any file

0244

1 related to the Archon property maintained by Crown  
2 Point, Inc., that has not been conveyed to FRE at this  
3 time?

4 A. I just really can't answer that question.

5 Q. Let me make sure I understand why you can't  
6 answer it. Because you do not know if there exists such  
7 a file? Or is there some other reason?

8 A. No, I have told you I have never seen it. And  
9 then your question was, does it exist. I don't know.  
10 Under the normal course of business, it would exist.

11 Q. I see.

12 A. And I'm sure that will be part of my  
13 revelations.

14 Q. Which don't end in this case.

15 Have you made a request for all files  
16 related to the properties that have been conveyed by the  
17 various TCI entities into FRE Real Estate since you  
18 became the chief executive officer?

19 A. No. You were on the other end of the table,  
20 but the question was, who is FRE. I am it. And so I  
21 know where they are when I need to go get them. I can  
22 access them. But I have not specifically set up a  
23 specific area in which the files are being moved to.

24 Q. So as of right now, if there exists a file  
25 with respect to the Archon property or Crown Point,

0245

1 Inc., that file exists in the custody of TCI or one of  
2 its related entities?

3 A. Right.

4 Q. And when do you plan, if at all, to go get  
5 that file for -- and put it some place where you have  
6 control of it?

7 A. Within the next 30 days. I'm going to have  
8 to -- I have tagged an assistant that I'm either going  
9 to have to pay for myself or have somebody fund. And  
10 once I get her on board, I plan to separate a location  
11 for FRE over in Fenton Centre and get everything in one  
12 place where I can have access to it.

13 Q. This may have also been something -- well, I  
14 know it is something that you covered in some  
15 discussions earlier in your deposition. But we talked  
16 about these promissory notes and the amounts of these  
17 notes.

18 Am I correct in my understanding as to  
19 what you think they do and how they work when I say that  
20 the note's amount is really tied back in a way to the  
21 value of the property that it relates to? So that if  
22 you don't sell the property for what the note is equal  
23 to, you get to reduce the note. Is that your  
24 understanding?

25 A. That's the understanding.

0246

1 Q. So then as a practical matter, if I understand  
2 that correctly, it really doesn't matter whether that  
3 note is \$2 million in the case of Archon or \$4 million  
4 or \$8 million. Because if the property doesn't generate  
5 that amount, then you get to reduce it down to whatever  
6 the property does generate. Right?

7 A. More succinctly put, my first job is to pay  
8 you.

Morgan, Richard 01-27-11.txt

9 Q. I understand. That's a good thing.  
10 A. Okay.  
11 Q. But my question is: If the value of this note  
12 were -- or the amount of this note rather were not --  
13 A. You are correct. I didn't mean to be curt.  
14 You are correct. If it comes out and I sell it and half  
15 the note can be paid, then maybe half the note is paid.  
16 But I'm not -- it is not a situation where it just keeps  
17 going on and becomes a general obligation of the  
18 company. It is tied in asset by asset.  
19 MR. BUNCHER: I will just state, for the  
20 record, it is our understanding that the notes will  
21 not -- there will be no payment on the notes unless the  
22 secured debt on the property that that note goes with  
23 and any unsecured debt that got transferred along with  
24 that property is paid off. Then any excess money will  
25 be paid on the note.

0247

1 THE WITNESS: Or some retained for  
2 operating, administrative expenses.  
3 MR. BUNCHER: Sure.  
4 Q. (BY MR. STROMBERG) What is your understanding  
5 if, for example -- looking at Archon. The Archon  
6 property carries a seller financing note for \$2,004,000,  
7 right?  
8 A. Let me go back to your land again. Archon  
9 property. It says 6,700,000.  
10 Q. Oh, I'm sorry. I think we are looking at the  
11 wrong thing. Archon that I'm seeing shows a seller  
12 financing note for 2,004,039 --  
13 A. Oh, okay. You are correct.  
14 Q. So just to use this as an example --  
15 A. Yes.  
16 Q. -- if the property were sold for 5,700,000,  
17 then the first lien would be paid first, right?  
18 A. That's correct.  
19 Q. And then the note would be paid second leaving  
20 \$1 million owing?  
21 A. Second is any unsecured debtors.  
22 Q. Oh, okay. And then the note would be paid  
23 third?  
24 A. Right, to whatever is left. And then that  
25 note -- that portion of the note goes away.

0248

1 Q. So if it is sold for 5,700,000, relative to  
2 the note balance, you would be short \$1 million, but  
3 then that million would go away?  
4 A. Right.  
5 Q. Now, if, suppose, for the sake of discussion,  
6 the property were to sell for \$8,700,000 as opposed to  
7 \$6,700,000. Then what, in your understanding and  
8 appreciation, would happen to the \$2 million excess over  
9 the amount of the debt and the note?  
10 A. That would become property of the debtor.  
11 Q. All right. Other than your counsel, who, as  
12 the chief restructuring officer, do you consult with  
13 regarding this case? Is there anybody?  
14 MR. BUNCHER: He already indicated. He  
15 talked about Prime, he talked about Regis, he talked  
16 about Greg Crown, talked about a number of people that  
17 he works with on this matter. So are you asking for  
18 something different?

19 MR. STROMBERG: I'm just asking if we  
Page 103

Morgan, Richard 01-27-11.txt

20 have named everybody that he consults.  
21 Q. (BY MR. STROMBERG) And I guess you can answer  
22 that question.

23 A. Yes. If there's a sale coming up, if there's  
24 a pending sale, then, obviously, I will talk to Mr. Moos  
25 about it before we do the sale -- because it is going to

0249  
1 affect his note -- and get his blessing, get his  
2 sign-off on it before I go charging down the way.

3 Even though I have got the right to do  
4 it, it would be unfair for me to just go out and take a  
5 lowball offer just to get you paid off and wipe out the  
6 note.

7 Q. And in the capacity in which you would talk to  
8 Mr. Moos, that's in his capacity as an officer of  
9 Transcontinental Realty Investors?

10 A. Right.

11 Q. Because -- I understand your comment earlier,  
12 because they have, under the Allonge, the note. And  
13 they are the ones who stand to get paid if there's  
14 excess proceeds. Am I right?

15 A. I don't know who has the note. I'm not  
16 familiar with that. But if that's the case, yes.

17 Q. All right. And that's why you would have to  
18 contact Mr. Moos?

19 A. Yes.

20 Q. Anybody outside of your counsel or the people  
21 who work with the associated entities of  
22 Transcontinental Realty Investors or Prime Asset that  
23 you confer with for advice regarding your CRO  
24 responsibilities for FRE?

25 A. On a friendly basis, just as a friend, not as

0250  
1 counsel, I'm a good friend of Henry Simon's. And  
2 sometimes we will just go and sit and chat about  
3 concepts and not particular actions just to be sure.

4 Q. Have you had any discussions with Mr. Simon  
5 about this case since it was filed on January 4th?

6 A. No.

7 Q. When I asked you before about what you did to  
8 prepare for your deposition and you told me about your  
9 discussions with Mr. Butler and Mr. Lemke, did you look  
10 at any documents that you can recall as you sit here  
11 today?

12 A. No.

13 Q. You told us earlier in your deposition that  
14 you sought advice from Mr. LaJone acting as counsel for  
15 the transferor entities when you wanted information  
16 about what the agreement that you were signing provided  
17 and implied. Am I right?

18 A. Well, my first -- my first contact, and I  
19 believe this email states that, is not to Mr. LaJone.  
20 It is to John Daugherty and Lou Corna, who are in the  
21 legal department.

22 Q. Legal department of?

23 A. Of Prime.

24 Q. Prime Asset?

25 A. Yeah.

0251  
1 Q. Anyone else?

2 A. That's it. And I forgot the question. Ask it  
3 again, please. I really did forget the question.

4 Q. Oh, I'm sorry. Well, my question was, was



Morgan, Richard 01-27-11.txt

5 there anybody else that you consulted regarding the  
6 impact or meaning of the agreement pursuant to which you  
7 have the right to deal, as you do, with these promissory  
8 notes?

9 A. Oh, okay. On that issue -- I was getting  
10 confused as to... Greg Crown was the one putting  
11 everything together. And I questioned Greg -- because  
12 it was explained to me the way Greg explained it to me,  
13 and he had gone through the documentation, then I  
14 challenged or questioned that. And we got Mr. LaJone on  
15 the phone between the two of us on a speaker phone so we  
16 could understand what the intent was.

17 Q. Now, in response to a question from Mr.  
18 Weitman, and at the risk of asking the same question in  
19 a slightly different way, you were brought in to be the  
20 chief restructuring officer for FRE to supervise what,  
21 in effect, was an already implemented plan for how the  
22 restructuring was going to occur with a possibility of  
23 bankruptcy. Am I right? Did I understand that  
24 correctly?

25 MR. BUNCHER: I'm going to object to the

0252 form.

1 Q. (BY MR. STROMBERG) Set me straight then.

2 A. Okay. I was brought in primarily to do  
3 exactly what I do and that's increase value of assets.  
4 Administration of some of the works is -- that's just  
5 part of the process. But my primary focus is on  
6 creating value of the properties.  
7

8 Q. But on the day that you were first consulted  
9 about this, if I understand correctly, which was  
10 December 23rd, the transfers of these properties were  
11 already -- to the entity that you were going to be the  
12 chief restructuring officer for, were already in the  
13 process of taking place?

14 A. That's correct.

15 Q. As the chief restructuring officer, what other  
16 reorganization opportunities did you consider, other  
17 than transferring all of the properties to FRE, if any  
18 there were?

19 A. It was all done at that time -- it was either  
20 done or in the process of being done. I was -- when I  
21 agreed to take it, I had to look at the whole ball of  
22 wax, what do I have, what am I going to do with it.

23 Q. Were you consulted about the possibility of  
24 transferring some, but not all of the properties that  
25 got transferred into FRE?

0253 1 A. No.

2 Q. Were you consulted about other options or  
3 prospects for reorganization or for refinancing that may  
4 have been under consideration before December 23, 2010?

5 A. No.

6 Q. Did you have any discussions with any of the  
7 principals of Transcontinental Realty Investors or  
8 anybody else that you have spoken to about this case  
9 regarding these properties that were transferred into  
10 FRE before December 23, 2010?

11 A. No.

12 Q. Was your first knowledge of these properties  
13 as a -- being transferred as a unit to FRE on that date?

14 A. Somewhere about that date, the day I got this  
15 schedule. And I'm not sure exactly when it was.

Morgan, Richard 01-27-11.txt

16 Q. Okay. Are you familiar with or have you  
17 familiarized yourself with the loan agreement between  
18 State Bank of Texas and Crown Point, Inc.?

19 A. No.

20 Q. There was a loan modification executed in  
21 September of 2010. Were you aware of that?

22 A. No.

23 Q. Other than what you've received from third  
24 parties, do you have personal familiarity with the  
25 amount of the debt to State Bank of Texas?

0254

1 A. No.

2 Q. Do you have any reason to know of any basis to  
3 contest the validity of State Bank of Texas'  
4 pre-bankruptcy lien, as you sit here today?

5 A. I think that's a legal question. And I can't  
6 answer that.

7 Q. No. I'm asking you if you are aware of any  
8 basis to contest the validity of that lien. This is  
9 about your awareness, as you sit here today.

10 A. I mean, in my mind, that's a legal conclusion.

11 THE WITNESS: Is it not?

12 MR. BUNCHER: Well, he's just asking you  
13 if you know of any. I mean, we may know of something  
14 or -- but he's just asking --

15 A. No, I don't.

16 MR. BUNCHER: -- you whether you do.

17 A. No, I don't.

18 Q. (BY MR. STROMBERG) Thank you. Do you know or  
19 have any reason to believe that whether or not the loan  
20 to State Bank of Texas was or was not in default prior  
21 to the filing of the bankruptcy by FRE?

22 A. No.

23 Q. Do you have any knowledge as to whether or not  
24 the property was posted for foreclosure prior to the  
25 filing of bankruptcy by FRE?

0255

1 A. No.

2 Q. Do you know when it was that State Bank of  
3 Texas first became aware of the general warranty deed  
4 executed on December 23, 2010, conveying the Archon  
5 property into FRE?

6 A. No.

7 Q. Do you know when it was that State Bank of  
8 Texas first became aware of the conveyance of their  
9 properties to FRE?

10 A. No.

11 Q. Do you know when it was that State Bank of  
12 Texas first became aware of the conveyance of the  
13 Coventry Point shares to ABCLD Income?

14 A. No.

15 Q. Do you know when it was that State Bank of  
16 Texas first became aware of FRE's bankruptcy filing?

17 A. No.

18 Q. Or how they became aware of it?

19 A. No.

20 Q. Do you know whether or not State Bank of Texas  
21 actually foreclosed on the Archon real estate?

22 A. No.

23 Q. And do you know whether or not State Bank of  
24 Texas or any of its representatives had actual awareness  
25 of the FRE bankruptcy on January 4, 2010, at any time

0256

Morgan, Richard 01-27-11.txt

1 before 1:00?

2 A. No.

3 MR. BUNCHER: You mean 2011.

4 Q. (BY MR. STROMBERG) Excuse me. 2011 --

5 A. No.

6 Q. -- before 1:00?

7 A. No.

8 MR. STROMBERG: Thank you. I appreciate  
9 that.

10 Q. (BY MR. STROMBERG) You talked earlier in your  
11 deposition about adequate protection for some of these  
12 properties. Do you recall that discussion?

13 A. I do.

14 Q. In that discussion you mentioned that there  
15 were two places that you thought you might look for  
16 adequate protection: One being investor pools and the  
17 other being to TCI. And?

18 A. And/or whatever entity they came from.

19 Q. Okay. That's fine. Thank you. But if I can  
20 refer to TCI to include any and all of those entities.  
21 Can we do that --

22 A. Yes.

23 Q. -- just for the purpose of these questions.  
24 okay. Thank you.

25 I also understood your testimony to be

0257

1 that you weren't aware of any particular investors with  
2 respect to the property you were being asked about at  
3 the time who were available to provide adequate  
4 protection money for those properties. Would the same  
5 be true of the Archon property?

6 A. True.

7 Q. And have you inquired, since you have taken  
8 the responsibility of chief restructuring officer for  
9 the debtor, as to whether or not TCI has the ability or  
10 the willingness at this point in time to fund any  
11 adequate protection payments in relation to the Archon  
12 property?

13 A. I have not.

14 Q. You have not. Just to clarify then, when you  
15 answered that question I have not, that means you  
16 haven't inquired as of this time. Am I right?

17 A. That's correct.

18 Q. Okay. Mr. Weitman asked you a question  
19 about --

20 A. Can I ask a question?

21 Q. Sure.

22 MR. STROMBERG: Off the record.

23 (Witness and counsel confer, 4:00 p.m. to 4:01 p.m.)

24 Q. (BY MR. STROMBERG) Did you have something you  
25 wanted to clarify about your prior answer, Mr. Morgan?

0258

1 A. No.

2 Q. Okay. Let me ask you, then, what do you know  
3 about the ability of TCI to fund any form of investment  
4 into the debtor in relation to any specific property or  
5 generally at this point in time?

6 A. All right. Ask the question again because I'm  
7 probably going to answer it in two parts. Okay. Would  
8 you ask it again?

9 Q. I would be happy to. As you sit here today,  
10 what do you know about the ability of TCI to fund any  
11 form of adequate protection for either any specific

Morgan, Richard 01-27-11.txt

12 properties that are owned by FRE or for FRE in general  
13 as of this day?

14 A. Okay. I think TCI certainly is a big company.  
15 To the extent of their financial condition and their  
16 cash flow, I have no knowledge. In the end, any support  
17 that I get from TCI would be most likely to protect  
18 their best interests, which is the note. Pure and  
19 simple.

20 Q. But you don't have any opinion, as you sit  
21 here today, as to what amount of adequate protection  
22 they have the present ability to fund if needed?

23 A. I do not. You know, I think that this is a  
24 general understanding, okay, not anything legal. That I  
25 should be prepared to put at least 3 percent adequate

0259  
1 protection against the first mortgage debt to make it  
2 acceptable to the court. And that's just a general  
3 understanding, and not necessarily anything anybody has  
4 told me.

5 Q. Looking at Exhibit 168.

6 A. Yes, sir.

7 Q. That debt, as it appears to me -- unless you  
8 can tell me I'm wrong in assuming this -- appears to be  
9 \$178,176,947. Am I right?

10 A. Well, you have got to bifurcate the income  
11 properties and the collateral that goes with those  
12 income properties.

13 Q. Okay. Let me seek a clarification then on  
14 what you were saying. You had said something about a 3  
15 percent number?

16 A. No. I'm saying that I know that on land -- on  
17 the land in general, that's you and Armed Forces and  
18 everyone that is holding land, Wells Fargo included --

19 Q. And by land, you mean undeveloped land?

20 A. Right, undeveloped land.

21 Q. Okay. Go ahead.

22 A. That's not tied to an income producing asset,  
23 that it is going to have to be some adequate protection  
24 rate on that -- on that line.

25 Q. Okay. So you would back out of those figures

0260  
1 whatever the income producing -- the five income  
2 producing properties that you identified before?

3 A. I think that number is about \$80 million, just  
4 in round numbers is what I estimate it to be. The land  
5 debt is about \$80 million.

6 Q. So then --

7 A. That was before I knew some of it was tied in  
8 to other assets. I haven't done an analysis since then.

9 Q. Yeah. Assuming no cross-collateralization,  
10 then the land alone is an \$80 million --

11 A. No, no, no. I am just saying that that was  
12 before I knew some of the parcels, like the Limestone  
13 parcel, all of that was tied into other assets. I will  
14 have to go back and redo the -- redo the -- but let's  
15 just -- probably \$70 million is probably a number close  
16 to it.

17 Q. Okay. And that's the number you are figuring  
18 the 3 percent number for?

19 A. Right.

20 Q. And you don't have any knowledge, at this  
21 point at least, as to whether or not, if that was  
22 required to be funded by TCI, it could be?

Morgan, Richard 01-27-11.txt

23 A. That's going to be at the meeting that I will  
24 have to have next week relative to each asset and their  
25 commitment to do it.

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1 Q. Mr. Weitman also asked you about your chief  
2 restructuring officer experience with other TCI  
3 entities, and you said you didn't have any. Am I right?

4 A. No.

5 Q. I want to broaden that question a little bit  
6 and just ask: Do you have any similar experience for  
7 any nonTCI entities?

8 A. Actually, I do. I actually bought a company  
9 out of bankruptcy, which was the old Carl E. Smith  
10 Company. I say bought it. I didn't buy it. It was a  
11 company called New Concept Energy. I bought it, which  
12 is a related entity. But I bought through -- I bought  
13 it out of the bankruptcy process in 2008, late 2008.

14 Q. And New Concept Energy was an acquisition, if  
15 I understand what you just --

16 A. No. New Concept Energy is a publicly traded  
17 company. It is another entity that has never been  
18 mentioned to you. It is a publicly traded company on  
19 the American Stock Exchange and the GPR.

20 And as part of my role in energy, I sold  
21 land. I had some -- I put some -- or got cooperation  
22 with one of the entities to sell it some land on a note  
23 for \$4,000 -- mineral leases in Arkansas. That was  
24 4,000 acres at \$4,000 an acre. I sold it for \$32  
25 million. So I had \$16 million extra cash out of that

0262

1 sale. And I invested thirteen of that into the -- into  
2 buying the property out of -- in West Virginia called  
3 the Carl E. Smith Company, renamed it, and walked  
4 through that whole deal from the inception to the  
5 negotiations to the bankruptcy court through the plan  
6 approval and operating. And I still do.

7 Q. But you weren't representing or an officer of  
8 the debtor in that situation. Am I right?

9 A. No, I have not been on the debtor side. No.  
10 I've been on the buying side, but not the debtor side.

11 Q. So for purposes of being on the debtor side,  
12 forgive the expression, is this your first rodeo?

13 A. Well, you know, I filed bankruptcy myself in  
14 2005. So, no, it is not my first rodeo.

15 Q. I mean, in the capacity of a chief  
16 restructuring officer?

17 A. No, not at all.

18 Q. I didn't mean to bring that up again.

19 Are you a member of any organizations  
20 that deal with restructuring or bankruptcy or have a  
21 focus on that?

22 A. No.

23 Q. And I assume, then, that you don't advertise  
24 your services as a chief restructuring officer, at least  
25 not at this point?

0263

1 A. I don't advertise my services. I think  
2 that -- I used to have a joke that if you went to Herb  
3 Weitman and told him that you had a rundown center that  
4 you wanted him to buy, he would say, go see Dave Morgan.  
5 If you came to me and said, I have got a center I want  
6 you to build, I would say go see Herb. And it was sort  
7 of a -- I was a turnaround specialist since 1990.

Morgan, Richard 01-27-11.txt

8 Q. But you haven't had any special memberships or  
9 anything like that in the nature of a turnaround  
10 specialist?

11 A. You mean like an organization of turnaround  
12 specialists?

13 Q. Exactly.

14 A. No.

15 Q. We have a turnaround management association  
16 here in the area. You are not a member of that, are  
17 you?

18 A. No.

19 Q. Okay.

20 MR. STROMBERG: Pass the witness. Thank  
21 you, Mr. Morgan.

22 EXAMINATION

23 BY MR. BUNCHER:

24 Q. Just to clarify, describe, generally, your  
25 experience with working out troubled loans and assets in

0264 the real estate context.

1 A. Working -- I have never worked that much with  
2 loans. I have worked a lot of assets. And I started in  
3 1990. And I took over -- when Southmark and Phillips  
4 parted ways, he took with him the advisorships to  
5 several real estate trusts. And I was the first of the  
6 shopping center division. So I knew a lot about those  
7 shopping centers. And I went to him as -- when he did  
8 that. And I said, look, there are nine properties that  
9 your people don't know how to do.

11 And this is the same situation here.  
12 They don't have anybody in that organization. They have  
13 box checkers and daily managers and budget cutters. But  
14 they don't have anybody that can use their creative  
15 juices to make things happen.

16 And so I took over those nine properties  
17 to turn around. And then I bought four on my own. I  
18 bought them and then turned them around and renovated  
19 them and resold them.

20 And that took me up until the DeBartolo  
21 deal, which was in 1998. That was all land. I did  
22 buy -- I did buy the Gainesville Outlet Mall up in  
23 Texas -- up in Gainesville, Texas, for New Concept. And  
24 we kept it for a while and it just -- I had it up and  
25 going from a standpoint for a while, but it was -- the

0265 1 market just went to hell, so I didn't hold on to that  
2 one. I let it go.

3 And then I started restructuring  
4 companies basically. When I took over the management of  
5 New Concept, the founder died, it was in the Centura  
6 building, \$35,000 a month rent, no income. And now it's  
7 a \$20 million value, and stock is -- about \$11 million  
8 of that is reserves so -- and making about \$50,000 a  
9 month.

10 MR. STROMBERG: May I ask a follow-up  
11 question?

12 MR. BUNCHER: Sure.

13 FURTHER EXAMINATION

14 BY MR. STROMBERG:

15 Q. Given what you have told us about the fact  
16 that you have these people who lack the creative genius  
17 to put reorganizations together, doesn't it trouble you  
18 a bit that the reorganization that you have been asked

Page 110

HC 00956

Morgan, Richard 01-27-11.txt  
19 to run basically was already, more or less, set up  
20 before you got here?  
21 A. No, it doesn't trouble me at all. Because I'm  
22 looking at -- I'm looking at the -- I'm looking at this  
23 side of the sheet.  
24 Q. The properties themselves?  
25 A. What can I do with it, how can I make it work.

0266  
1 And I think I can make it all work given the right time  
2 and structure to make it work.  
3 MR. STROMBERG: Pass the witness.  
4 MR. BROWN: We are done.  
5 MR. BUNCHER: Done.  
6 (Deposition concluded, 4:12 p.m.)  
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1 CHANGES AND SIGNATURE  
2 WITNESS NAME: Richard David Morgan  
3 DATE OF DEPOSITION: January 27, 2011  
4 PAGE LINE CORRECTION REASON  
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1 I, RICHARD DAVID MORGAN, have read the foregoing  
2 deposition and hereby affix my signature that same is  
3 true and correct except as noted above.

Page 111

HC 00957

Morgan, Richard 01-27-11.txt

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RICHARD DAVID MORGAN

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8

THE STATE OF TEXAS )  
COUNTY OF )

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10

Before me, \_\_\_\_\_, on this day  
personally appeared, RICHARD DAVID MORGAN, known to me  
(or proved to me under oath of through \_\_\_\_\_)  
(description of identity card or other document) to be  
the person whose name is subscribed to the foregoing  
instrument and acknowledged to me that they executed the  
same for the purposes and consideration therein  
expressed.

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Given under my hand and seal of office this \_\_\_\_\_  
day of \_\_\_\_\_ 2011.

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Notary Public in and for the State of Texas

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STATE OF TEXAS )  
COUNTY OF DENTON )

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I, Holly B. Smith, Certified Shorthand Reporter  
duly qualified in and for the State of Texas, do hereby  
certify that there came before me on the 27th day of  
January 2011, at the offices of K&L Gates, 1717 Main  
Street, Suite 2800, Dallas, Texas, the following named  
person, to wit: RICHARD DAVID MORGAN, who was duly sworn  
to testify the truth, the whole truth, and nothing but  
the truth of his knowledge concerning the matters in  
controversy in this case; and that he was thereupon  
carefully examined upon his oath, and his examination  
reduced to typewriting by me or under my supervision;  
that the deposition is a true record of the testimony  
given by the witness, same to be sworn to and subscribed  
by said witness before any Notary Public pursuant to the  
agreement of the parties.

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I further certify that I am neither attorney nor  
counsel for nor related to or employed by any of the  
parties to the action in which this deposition is taken,  
and further that I am not a relative or employee of any  
attorney or counsel employed by the parties hereto or  
financially interested in the action.

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Given under my hand on this the 29th day of January  
2011.

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Holly B. Smith, Texas CSR  
Date of Expiration: 12/31/11  
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Page 112

HC 00958



Morgan, Richard 01-27-11.txt

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